



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

KATHLEEN K. WEST, Administrative Code Editor  
STEPHANIE A. HOFF, Deputy Editor

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The Iowa Administrative Code shall be cited as (agency identification number) IAC  
(chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication  
date), (page number), (ARC number).

## Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
***May 17***	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
***June 28***	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
***Aug. 23***	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
***Nov. 15***	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
***Dec. 13***	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
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#### ISSUE NUMBER

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#### SUBMISSION DEADLINE

Wednesday, November 15, 2006

Friday, December 1, 2006

Wednesday, December 13, 2006

#### ISSUE DATE

December 6, 2006

December 20, 2006

January 3, 2007

#### PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

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### Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets by subscription. Supplement (replacement pages) subscriptions must be for the complete year and will expire on June 30 of each year. Prices for the Iowa Administrative Code and its Supplements are as follows:

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July 1, 2006, to June 30, 2007	\$328
October 1, 2006, to June 30, 2007	\$246
January 1, 2007, to June 30, 2007	\$164
April 1, 2007, to June 30, 2007	\$ 82

Single copies may be purchased for \$23.

All checks should be made payable to the Treasurer, State of Iowa, and mailed to:

Attn: Nicole Navara  
Legislative Services Agency  
Miller Building  
Des Moines, IA 50319  
Telephone: (515)281-6766

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### IOWA LAW, IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

For free brochures and order forms for 2006 IOWA LAW CD-ROM, contact Nicole Navara at the above address or at [nicole.navara@legis.state.ia.us](mailto:nicole.navara@legis.state.ia.us).

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Renewal of initial administrator license, 17.13 IAB 11/8/06 <b>ARC 5518B</b>	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 28, 2006 1 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Recycling property eligible for property tax exemption, 11.6 IAB 10/11/06 <b>ARC 5450B</b>	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 8, 2006 1 p.m.
<b>LABOR SERVICES DIVISION[875]</b>		
Safety rules for amusement rides, devices and concession booths, 61.1(1), 62.2(9) IAB 11/8/06 <b>ARC 5534B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	November 28, 2006 9 a.m. (If requested)
<b>MEDICAL EXAMINERS BOARD[653]</b>		
Specialty board certification, 9.1, 10.1, 11.1, 11.2(2) IAB 11/8/06 <b>ARC 5513B</b>	Suite C 400 S.W. 8th St., Des Moines, Iowa	November 28, 2006 3 p.m.
Passing score for Internet-based test of English proficiency, 10.4(3), 17.4(1) IAB 11/8/06 <b>ARC 5512B</b>	Suite C 400 S.W. 8th St., Des Moines, Iowa	November 28, 2006 3 p.m.
Grounds for discipline, 23.1(37) IAB 11/8/06 <b>ARC 5511B</b>	Suite C 400 S.W. 8th St., Des Moines, Iowa	November 28, 2006 3 p.m.
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Docks and other structures on public waters, ch 16 IAB 11/8/06 <b>ARC 5532B</b>	City Hall Community Rm. 15 North 6th St. Clear Lake, Iowa	November 28, 2006 7 p.m.
	Spirit Lake Community Center 1602 15th St. Spirit Lake, Iowa	November 29, 2006 7 p.m.
	Auditorium Wallace State Office Bldg. Des Moines, Iowa	November 30, 2006 7 p.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
Optometrists—licensure and continuing education, 180.5(5), 181.2(1), 181.3(2) IAB 11/8/06 <b>ARC 5517B</b>	5th Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	November 28, 2006 9 to 9:30 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Physician assistants—licensure and supervision, 326.3(2), 326.3(7), 326.8(1), 326.8(4) IAB 11/8/06 <b>ARC 5522B</b>	5th Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	November 28, 2006 9:30 to 10:30 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Flammable and combustible liquids, 51.200, 51.202(1) IAB 10/25/06 <b>ARC 5501B</b>	Conference Room, Suite N 401 SW 7th St. Des Moines, Iowa	November 16, 2006 1:30 p.m.
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**STATE PUBLIC DEFENDER[493]**

Claims procedures—indigent defense and juvenile cases, amendments to chs 7, 12, 13 IAB 11/8/06 <b>ARC 5540B</b>	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	November 30, 2006 9 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Annual oversize/overweight permit, 511.5(2) IAB 11/8/06 <b>ARC 5509B</b>	DOT Conf. Rm., Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	November 30, 2006 10 a.m. (If requested)
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Gas and electric line extensions, 19.3(10), 20.3(13) IAB 9/13/06 <b>ARC 5382B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	November 14, 2006 10 a.m.
Rules prohibiting unauthorized changes to telecommunications service, 22.23(2)“a”(5) IAB 10/11/06 <b>ARC 5423B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	November 21, 2006 10 a.m.

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Iowa veterans home, amendments to ch 10 IAB 10/25/06 <b>ARC 5481B</b>	Ford Memorial Conference Rm. Iowa Veterans Home 1301 Summit Marshalltown, Iowa	November 16, 2006 10 a.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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**ARC 5518B****EDUCATIONAL EXAMINERS  
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, “Renewal of Licenses,” Iowa Administrative Code.

The proposed amendment provides for the renewal of an initial administrator license if it is needed. The provisions are similar to those for renewal of initial teaching licenses.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, November 28, 2006, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, December 1, 2006. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [barbara.hendrickson@iowa.gov](mailto:barbara.hendrickson@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Adopt the following new rule:

**282—17.13(272) Renewal requirements for the initial administrator license.**

**17.13(1)** If a person meets all requirements for the professional administrator license except for the requirements in 282—subrule 14.114(2), the initial administrator license may be renewed upon written request. A second renewal may be granted if the holder of the initial administrator license has not met the requirements in 282—subrule 14.114(2) and if the license holder can provide evidence of

employment as a PK-12 administrator, which meets the experience requirement.

**17.13(2)** An extension of the initial administrator license may be issued, instead of renewing the initial administrator license, if the applicant verifies one of the following:

a. The applicant is involved in a mentoring and induction program, but the license will expire before the first year of administrative experience is completed.

b. The applicant has one year of administrative experience in a nonpublic school setting or in an out-of-state setting and needs one additional year of administrative experience to convert the initial license to the professional license.

The fee for this extension is \$25.

**17.13(3)** Each applicant renewing an initial administrator license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

a. A person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. A person is practicing a licensed profession outside this state.

d. A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

**ARC 5516B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 156, “Payments for Foster Care and Foster Parent Training,” Chapter 182, “Family-Centered Services,” Chapter 185, “Rehabilitative Treatment Services,” and Chapter 202, “Foster Care Services,” Iowa Administrative Code.

These amendments change rules for child welfare services to accommodate Medicaid amendments that establish a new service category, remedial services, to take the place of rehabilitative treatment services. (See **ARC 5514B** herein.) Under the Medicaid amendments, the Department redefines the scope of covered services to match the definition of rehabilitative services in federal regulations. The way remedial services are provided under Medicaid will change to reflect a medical model of rehabilitation.

After discussions with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, the Department has determined that these changes are necessary to ensure continued access to remedial services. The General Assembly, in 2006 Iowa Acts, House File 2734, section 10, subsection 11, directed the Department to submit a state plan amendment to CMS to implement the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

changes from rehabilitative treatment services to remedial services.

Under these amendments:

- A new methodology is established for determining family foster care difficulty of care maintenance payments that is based on an assessment of the child's emotional, behavioral, and physical care needs. This method will apply to all placements made on or after January 1, 2007. Children in placement before January 1, 2007, will transition to the new payment structure as assessments are reviewed.

- Rates for foster family respite care will be set using the same criteria as those used for regular foster family care.

- Rehabilitative treatment services under Chapter 185 will no longer be provided in foster group care. Children in foster group care who need rehabilitative services will be eligible through the Medicaid program under the new remedial service category as soon as remedial services can be authorized and implemented. If remedial services cannot be authorized by October 31, 2006, the service area manager may issue a state payment for remedial services.

- An interim rate methodology is established for group care maintenance and child welfare services to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services.

- Medicaid-eligible children who need in-home rehabilitative services will be served through the Medicaid program under the new remedial service category as soon as remedial services can be authorized and implemented. Medicaid-eligible children will continue to be eligible for rehabilitative treatment services based on an authorization from the Iowa Foundation for Medical Care in response to requests received on or before December 31, 2006, unless the children are receiving remedial services through the Medicaid program.

- The Department will continue through December 31, 2006, to issue authorizations for nonrehabilitative treatment services and authorizations for rehabilitative treatment services for children who are not Medicaid-eligible. No new authorizations or reauthorizations will be issued after December 31.

- After December 31, 2006, the Department will continue to issue authorizations for other family-centered services, including parental counseling and education, family team meeting facilitation, supervision, relative home study and home study update, community resource procurement, and flexible family support fund, and for family foster care supervision.

- The definitions of family-centered supervision and parental counseling and education components are revised to more clearly allow the Department to purchase supervision of sibling and parent-child visits, and to allow the Department to purchase a psychosocial evaluation relating to the child's safety, permanency, and well-being.

These amendments constitute an interim step in redesigning child welfare services to accommodate changes in Medicaid funding. The Department plans to propose rules later this year to address how child welfare services should be provided and authorized in an environment "delinked" from the Medicaid program.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5515B**. The purpose

of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before November 29, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 234.6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

## INSURANCE DIVISION

### Notice of Approval of Workers' Compensation Rate Filing

Pursuant to the provisions of Iowa Code chapter 515A, the National Council on Compensation Insurance, Inc. (NCCI) submitted a rate filing on August 3, 2006. Notice of the filing was published in the Iowa Administrative Bulletin on August 30, 2006. No request for a hearing on the rate filing was received.

The Commissioner found the proposed manual rates not in compliance with Iowa Code section 515A.3, in that the rates did not meet the requirement of not being unfairly discriminatory. It was ordered that the August 3, 2006, rate filing was disapproved.

The National Council on Compensation Insurance, Inc. submitted an amendment to the filing changing the rates for three classifications. The rate filing as amended proposed an overall increase in rates of 6.7%. Based on an independent review of the NCCI proposal, the Commissioner finds the proposed rates from the August 3, 2006, filing as amended not to be excessive, inadequate, or unfairly discriminatory.

Susan Voss, Commissioner of Insurance, ordered that the August 3, 2006, rate filing as amended is approved to be effective January 1, 2007.

## ARC 5534B

## LABOR SERVICES DIVISION[875]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 61, "Administration—Amusement Parks and Rides Division," and Chapter 62, "Safety Rules for Amusement Parks and Rides," Iowa Administrative Code.

## LABOR SERVICES DIVISION[875](cont'd)

The proposed amendments change the chapter titles of both chapters and change one definition to make the rules more consistent with Iowa Code chapter 88A.

The proposed amendment to subrule 62.2(9) excludes the blowers of inflatable rides from the rule that requires an electrical disconnect switch be located within reach of the operator. Enforcement of the electrical disconnect requirement for inflatable ride blowers creates hazards that do not apply to mechanical rides. Furthermore, inflatable ride blowers must comply with occupational safety and health requirements and the National Electrical Code (NEC), NFPA Number 70-1975, which provide adequate protection for ride operators. The amendment also changes the language requiring the electrical disconnect to more closely parallel standard industry usage as reflected in the NEC.

The purposes of these amendments are to implement legislative intent and protect the health and safety of ride operators and the public.

If requested by the close of business on November 28, 2006, a public hearing will be held on November 29, 2006, at 9 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption on or before November 29, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.state.ia.us](mailto:kathleen.uehling@iwd.state.ia.us).

These amendments are intended to implement Iowa Code chapter 88A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind **875—Chapter 61**, title, and adopt the following **new** title in lieu thereof:

## CHAPTER 61

## ADMINISTRATION OF IOWA CODE CHAPTER 88A

ITEM 2. Amend subrule **61.1(1)**, definition of "Act," as follows:

"Act" means the Iowa Amusement Park and Ride Safety Inspection and Regulation Act of 1972 (Iowa Code chapter 88A).

ITEM 3. Amend the title of **875—Chapter 62** as follows:

## CHAPTER 62

## SAFETY RULES FOR AMUSEMENT PARKS AND RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

ITEM 4. Amend subrule 62.2(9) as follows:

**62.2(9)** Master switch. Each electrically operated amusement device ~~not designed to be controlled directly by the public~~ shall be provided with a *fused* disconnect power switch or circuit breaker placed within unobstructed reach of the ride operator. *This subrule shall not apply to blowers*

*for inflatable rides or to devices designed to be controlled directly by the public.*

## ARC 5513B

## MEDICAL EXAMINERS BOARD[653]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," and Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," Iowa Administrative Code.

The proposed amendments update the definitions of the American Board of Medical Specialties (ABMS) and the American Osteopathic Association (AOA) and allow specialty board certification or recertification under ABMS or AOA to serve as an equivalent to 50 hours of category 1 activity for purposes of license renewal.

The Board approved the proposed amendments to Chapters 9, 10 and 11 during its regularly held meeting on October 12, 2006.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on November 28, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing on November 28, 2006, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 272C.2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **653—9.1(147,148,150,150A)**, definitions of "ABMS" and "AOA," as follows:

"ABMS" means the American Board of Medical Specialties, *which is an umbrella organization that credentials medical specialties for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States.* The board recognizes specialty board certification by ABMS.

"AOA" means the American Osteopathic Association, *which is the representative organization for osteopathic physicians (D.O.s) in the United States.* The board approves osteopathic medical education programs with AOA accredi-

## MEDICAL EXAMINERS BOARD[653](cont'd)

tation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty *board* certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

ITEM 2. Amend rule **653—10.1(147,148,150,150A)** as follows:

Add the following **new** definition in alphabetical order:

“ABMS” means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

Amend the following definition:

“AOA” means the American Osteopathic Association, which is the *representative organization for osteopathic physicians (D.O.s) in the United States*. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited ~~postgraduate resident~~ training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty *board* certification by AOA. *The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.*

ITEM 3. Amend rule **653—11.1(272C)** as follows:

Add the following **new** definition in alphabetical order:

“ABMS” means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

Amend the following definition:

“AOA” means the American Osteopathic Association, which ~~accredits continuing medical education through its Council on Continuing Medical Education~~ *is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.*

ITEM 4. Amend subrule 11.2(2) as follows:

**11.2(2)** The board shall accept the following as equivalent to 50 hours of category 1 activity: ~~successful completion of one year of participation in an approved residency or fellowship resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.~~

**ARC 5512B****MEDICAL EXAMINERS BOARD[653]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 10, “Resident, Special and Temporary Physician Licensure,” and Chapter 17, “Licensure of Acupuncturists,” Iowa Administrative Code.

The proposed amendments set the passing score at 79 for the Internet-based version of the test of English proficiency, the examination used to evaluate English proficiency of international graduates who are applying for an M.D., D.O. or acupuncture license.

The Board approved the proposed amendments to Chapters 10 and 17 during its regularly held meeting on October 12, 2006.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on November 28, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing on November 28, 2006, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners’ office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 272C.2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **10.4(3)**, paragraph “a,” subparagraph (4), as follows:

(4) Demonstrate proficiency in English by providing a valid ECFMG certificate or verification of a passing score on the TSE, the Test of Spoken English, or TOEFL, the Test of English as a Foreign Language, examinations administered by the Educational Testing Service. A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), of a minimum overall score of 213 on the computer-administered TOEFL, *or a minimum overall score of 79 on the Internet-based examination;*

ITEM 2. Amend subrule **17.4(1)**, paragraph “c,” subparagraph (2), as follows:

(2) An applicant who passed NCCAOM written or practical examination components in a language other than English shall pass the Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) examinations administered by the Educational Testing Service. A passing score

## MEDICAL EXAMINERS BOARD[653](cont'd)

on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), of a minimum overall score of 213 on the computer-administered TOEFL, or a minimum overall score of 79 on the Internet-based examination.

## ARC 5511B

MEDICAL EXAMINERS  
BOARD[653]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76, 148E.7, 272C.3, and 272C.4, the Board of Medical Examiners hereby amends Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

Grounds for discipline, formerly in Chapter 12, was moved to Chapter 23 on August 23, 2006. A ground for discipline, that the Board may take action if a licensee fails to complete the fingerprint process, was inadvertently omitted from the transition from Chapter 12 to the new Chapter 23, and this proposed amendment adds it to the grounds for discipline in Chapter 23.

The Board approved the proposed amendment at its regularly held meeting on October 12, 2006.

Any interested person may present written comments on this proposed amendment not later than 4:30 p.m. on November 28, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing on November 28, 2006, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners’ office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code chapters 17A, 147, 148, 148E and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Add **new** subrule 23.1(37) as follows:

**23.1(37)** Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

## ARC 5532B

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to rescind Chapter 16, “Public, Commercial, Private Docks and Dock Management Areas,” and adopt new Chapter 16, “Docks and Other Structures on Public Waters,” Iowa Administrative Code.

This proposed new Chapter 16 includes the following:

In proposed rule 16.4(461A,462A), reauthorization of general permits that exempt the owners of most private docks from obtaining individual permits and paying administrative fees is included. Eligibility requirements are revised, primarily by limiting general permits to those private docks that have no more than two boat hoists. A hoist capable of holding more than one small craft, such as a personal watercraft or a one-person sailboat, is defined as a single hoist.

In proposed rules 16.5(461,462A) and 16.6(461A,462A), new general permit categories are added for docks managed by cities and counties in front of shoreline that they own and for docks permitted by the U.S. Army Corps of Engineers.

In proposed subrule 16.3(3), new “offset” and “gap” provisions require that docks, hoists and boats be offset five feet from common boundaries with adjoining shoreline properties in order to provide an equitably shared ten-foot gap between boats stored on the water in front of adjoining properties. The offset requirement can be waived with consent of an adjoining property owner or where the adjoining owner’s right to object has been limited by an easement or restrictive covenant. See proposed rules 16.9(461A,462A) and 16.10(461A,462A).

As shoreline properties are redeveloped with a greater density of living units, demand for storage of boats in hoists or slips is anticipated to increase. Provisions are included enabling the Department to limit density of boat storage on the water. For new shoreline developments that request permits for hoists or slips with a density above a threshold of one hoist or slip per 12.5 feet of shoreline, an exception must be requested and justified. A typical boat hoist canopy is 10 to 12 feet wide. One hoist or slip per 12.5 feet of shoreline is roughly equivalent to a solid row of boat hoists side-by-side along all private shoreline. Commercial boat marinas do not need to justify an exception. These rules also include new dock length limits, with provisions for exceptions. A new provision enables local governments to prevent commercial dock use from conflicting with zoning of the shoreline property. These provisions can be found in proposed rules 16.7(461A,462A), 16.8(461A,462A), 16.9(461A,462A), and 16.10(461A,462A).

“Grandfather” provisions are included for existing hoists and slips. For example, some existing condominium-type properties currently have approximately twice the density of hoists that would be allowable without an exception to the limit of one hoist per 12.5 feet of shoreline. Proposed rule 16.9(461A,462A) mandates that an exception be granted for

## NATURAL RESOURCE COMMISSION[571](cont'd)

renewal of permits for existing docks, hoists and slips unless there are unusual circumstances, such as encroachment on rights of adjoining property owners or interference with navigation.

Application fees for private dock permits remain at \$125 as they were established in existing Chapter 16. Commercial dock permit application fees are increased to \$250. An annual administrative hoist or slip fee of \$50 is required for each slip or hoist authorized by a dock permit, except that for a private dock permit there is no annual fee for the first four hoists or slips, and for a commercial dock permit there is no annual fee for the first six hoists or slips or for any hoist or slip designated as "courtesy" space.

The rules for dock management areas are revised and clarified. Dock management areas were created to authorize docks for people who do not have riparian property rights. Primarily, these docks have served owners of property that is separated from lakes by streets or other strips of land dedicated to the public. The proposed rules establish priorities, essentially giving highest priority to those whose property is closest to the water. Fees for dock sites and hoist or slip assignments in dock management areas are specified in the rules.

Any interested person may make written suggestions or comments on the proposed rules on or before November 30, 2006. Such written materials should be directed to the Law Enforcement Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be three public hearings as follows:

7 p.m., Tuesday, November 28, 2006  
City Hall Community Room  
15 N. 6th St.  
Clear Lake, Iowa

7 p.m., Wednesday, November 29, 2006  
Spirit Lake Community Center  
1602 15th St.  
Spirit Lake, Iowa

7 p.m., Thursday, November 30, 2006  
Auditorium  
Wallace State Office Building  
502 E. 9th St.  
Des Moines, Iowa

At the public hearings, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the new chapter.

Any person who intends to attend a public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 571—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16  
DOCKS AND OTHER STRUCTURES  
ON PUBLIC WATERS

**571—16.1(461A,462A) Definitions.**

"Artificial lake" means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

"Boat hoist" or "lift" means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store multiple small vessels such as personal watercraft or one-person sailboats shall be treated as a single hoist.

"Catwalk" means a platform no more than four feet wide installed to provide access from a dock to a moored boat or boat hoist.

"Commercial dock" means a dock used as part of a business, including a dock extending from residential property if one or more mooring spaces at the dock are rented for profit. A dock maintenance fee charged by a property owners' association to its members is not a basis to classify a dock as commercial. This definition is not applicable to docks in dock management areas or concession operations administered by the department.

"Commission" means the natural resource commission.

"Common dock" means a dock serving two or more adjoining shoreline properties.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the director's designee.

"Dock" means a platform-type structure extending from shoreline property over a public water body.

"Dock management area" or "DMA" means an area in the bed of a water body adjoining a state park, wildlife management area, or recreation area or adjoining a strip of land that was dedicated to the public and is subject to the jurisdiction of the department pursuant to Iowa Code section 461A.11, second unnumbered paragraph. A dock management area includes the adjoining public land from which docks extend.

"Impoundment" means a body of water formed by constructing a dam across a waterway.

"Public dock" means a dock constructed and maintained to provide public access from public land to a water body.

"Public land" means land that is owned by the state, a city, or a county or land that has been dedicated for public access to a public water body.

"Public water body" is a water body to which the public has a right of access.

"Shoreline property" means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

"Slip" means a mooring space, usually adjacent to a dock, sometimes accessed by a catwalk.

"Water body" means a river or other stream, a natural lake, an artificial lake or other impoundment, or an excavated pit.

**571—16.2 Reserved.**

**571—16.3(461A,462A) Standard requirements for all docks.** All docks are subject to the following requirements:

**16.3(1)** Adverse impacts on aquatic ecosystem. All docks, hoists and related structures shall be located, sized,



## NATURAL RESOURCE COMMISSION[571](cont'd)

configured, constructed and installed to limit their adverse impacts on the aquatic ecosystem. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured, constructed and installed to minimize harm to aquatic habitat. Other restrictions may be placed on docks that are in a state protected waters area as necessary to protect the natural features of the designated area.

**16.3(2)** Adverse impacts on public access for recreational use. A dock shall not be configured to enclose an area of a public water body and create a private water area or otherwise adversely affect public recreational use of the water body. Where walking or wading parallel to the shore below the ordinary high-water mark would be physically practical except for the obstruction created by a dock, the dock owner shall not prevent a person from stepping on or over the dock to bypass the obstruction.

**16.3(3)** Location and offsets. To the extent practical, a dock and boat hoists shall be placed near the center of the shoreline property frontage and installed perpendicular to the shoreline to maximize offsets from neighboring properties. Each dock, hoist, moored vessel and other permitted structure shall be offset a minimum of 5 feet from an adjoining property line and 5 feet from the projection of a line perpendicular from the shoreline at the common boundary with adjoining shoreline property. A minimum gap of 10 feet must be maintained between adjoining docks (including "L" or "T" or catwalk segments), hoists or moored boats. Where projection of a line perpendicular from the shoreline is impractical, it is the intent of this rule that a 10-foot gap be maintained in a manner that is equitable to each adjoining shoreline property owner.

**16.3(4)** Length. A dock shall not extend farther from the water's edge than the distance necessary for reasonable access to the water body in relation to characteristics of the water body in the vicinity of the dock site and the impacts on the water body and other users. Access to maintain one or more boats in water with a minimum depth of 3 feet shall be considered sufficient access.

**16.3(5)** Display of 911 address. Each dock owner shall display the 911 address, including the street and city, assigned to the property served by the dock. The owner of a dock authorized by an individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least 1 inch high in a color contrasting with the background, on the water end of the dock, facing away from shore, and shall be plainly visible.

**16.3(6)** Winter removal. Each dock must be removed from public waters before December 15 of each year and shall not be reinstalled until the following spring unless the removal requirement is waived by a condition of a dock permit or by 16.18(461A,462A).

**16.3(7)** No enclosure of private docks. Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

**16.3(8)** Materials and flotation specifications. Every new floating structure authorized by this chapter shall use flotation methods and devices of a type constructed of low density, closed-cell rigid plastic foam; high impact polyethylene fiberglass material; untreated wood timbers; or other inert materials to provide flotation. Use of treated wood is prohibited. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if the following conditions are met: All containers must be cleaned of any product residue; all synthetic containers must be sealed and watertight;

and all containers must be filled with a closed-cell rigid plastic foam, sealed and watertight.

**16.3(9)** Flow of water. All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

**16.3(10)** Excavation, fill and aquatic vegetation removal prohibited. No bed material may be excavated or fill placed, and no aquatic vegetation may be removed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation, placement of fill, or aquatic vegetation removal is specifically authorized by a construction permit issued under 571—Chapter 13.

**16.3(11)** Storage, use, and dispensing of fuel. The storage, use, and dispensing of any fuel on a dock on or over a public water body or adjacent public land shall be in compliance with Iowa Code chapter 101 and administrative rules that implement chapter 101.

**16.3(12)** Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National Electrical Code, latest revision. All electrical service leading to docks shall include ground fault circuit protection.

**16.3(13)** Anchoring of river docks. All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for dock retrieval and removal when necessary to prevent or remove a navigation hazard.

**16.3(14)** Access for inspection. A dock, boat hoist, raft, platform, mooring buoy or any other structure on a public water body may be physically inspected at any time by a representative of the department as needed to determine whether it was placed and maintained in a manner consistent with the requirements in these rules or with a permit issued under these rules.

**571—16.4(461A,462A) General permits for private docks.** This rule establishes general permits until December 15, 2012, for private docks.

**16.4(1)** General permit for dock and two hoists for shoreline properties. This general permit allows a total of one dock and up to two hoists serving one residence. It also authorizes a "common dock" serving two or more residences located on adjoining shoreline properties. A common dock may include up to three hoists per shoreline property and be eligible for the general permit. The dock must extend from shoreline property on which one or more of the residences are located and must meet all of the following criteria:

a. Dock length limits. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 50 feet of the dock is in 3 feet of water up to a maximum of 300 feet. These lengths shall be measured from the water's edge when the dock is installed. A dock on an artificial lake or river may extend the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge when the dock is installed. However, the department may give notice to a property owner that a shorter dock length is necessary to avoid interference with navigation or an adjoining property owner's access. The width of an "L" or "T" segment at the outer end of a dock shall be included in measuring the length of the dock.

b. Width and configuration of docks on natural lakes. A dock on a natural lake shall have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment shall not exceed 200 square feet. That part of the



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main dock forming the center of a "T" segment or an extension of an "L" segment shall be included in measuring the area of the "T" or "L" segment. No other part of the dock may be more than 6 feet wide. Catwalks shall be at least 2 feet wide and considered as part of the dock. Catwalks shall be limited in length as in an "L" or "T" segment of the dock construction and shall not extend beyond the width of the hoist, except that a catwalk may be extended around the hoist for access to the hoist.

c. Compliance with standard requirements. The dock and associated hoists must comply with the standard requirements in 16.3(461A,462A) for all docks.

d. Other structures. Placement of any other anchored or floating structure, such as a swim raft, requires that either an individual private dock or a commercial dock permit be obtained.

**16.4(2)** General permit for private docks in specified other areas. This subrule establishes a general permit until December 15, 2012, for private docks in certain areas where circumstances, including narrowness of the water areas specified below, require different dock and hoist configurations. In the following areas, docks that fail to comply with the 10-foot "gap" requirement in 16.3(3) but that meet other standard dock requirements in 16.3(461A,462A) are eligible for a general permit, unless they obstruct navigation or an adjoining property owner's access: canals off West Okoboji Lake; Okoboji Harbor; inside harbor of Harborage at Clear Lake; Venetian Village Canal at Clear Lake; Cottage Reserve on Lake Macbride; Lake Panorama; canals at Lake Manawa; and Lake Delhi.

**571—16.5(461A,462A) General permit for docks permitted by Corps of Engineers.** This rule establishes a general permit until December 15, 2012, for docks authorized by permits or leases issued by the U.S. Army Corps of Engineers on waters under joint jurisdiction of the department and the U.S. Army Corps of Engineers.

**571—16.6(461A,462A) General permit for docks authorized by cities and counties that own or otherwise control shoreline property.** This rule establishes a general permit until December 15, 2012, for docks authorized by a city or county to extend from public land owned or controlled by the city or county. This general permit is subject to the condition that the docks shall comply with the standard requirements in 16.3(461A,462A). A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet. These lengths shall be measured from the water's edge when the dock is installed. The city or county authorizing maintenance of a dock and boat hoists shall be responsible for enforcing the standard requirements. The department reserves authority to determine whether the requirements of 16.3(461A,462A) and the length limit are met upon complaint of a person who claims that a public or private right is adversely affected by a permitted dock. If the department determines that a dock or hoist must be moved or removed from the water body because of an adverse effect, the department shall issue an administrative order to the city or county that is authorizing maintenance or use of the dock and to the person who is maintaining or using the dock. Issuance of the administrative order shall trigger a right of the city or county and the affected person to a contested case. If shoreline property is public land but there is uncertainty concerning the relationship between the authority of the city or county and the authority of the department, permits for docks extending from

the public land shall be issued pursuant to an interagency agreement between the city or county and the department.

**571—16.7(461A,462A) Individual private dock permit criteria.** In determining whether to issue a permit for an individual private dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

**16.7(1)** An individual private dock permit shall require docks or hoists to be in compliance with requirements in 16.3(461A, 462A), except as provided in 16.9(461A,462A) and 16.10(461A,462A).

**16.7(2)** An individual private dock on a natural lake may be permitted to extend 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water when the dock is installed. These lengths shall be measured from the water's edge when the dock is installed. If the water level declines after installation, additional segments may be installed during the season as needed to maintain 80 feet of dock in 3 feet of water, up to a maximum length of 300 feet from the water's edge. The maximum permitted length of an individual private dock on an artificial lake or river is the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge at normal water levels. The width of an "L" or "T" segment at the outer end of a dock shall be included in measuring the length of the dock.

**16.7(3)** The maximum number of hoists authorized by a permit for an individual private dock is one hoist for every 12.5 feet of shoreline.

**16.7(4)** Permitted "L" or "T" segments of an individual private dock on a natural lake shall not contain more than a total of 240 square feet including the area of the adjoining parts of the main dock.

**16.7(5)** An individual private dock may be exempted by permit condition from the winter removal requirement in appropriate circumstances under criteria in 16.18(461A,462A).

**571—16.8(461A,462A) Commercial dock permit criteria.** In determining whether to issue a permit for a commercial dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

**16.8(1)** A commercial dock permit shall require docks or hoists to be in compliance with requirements in 16.3(461A, 462A), except as provided in 16.9(461A,462A) and 16.10(461A,462A). Greater offsets may be required for new commercial docks or hoists if needed to minimize boat traffic and congestion that spills over in front of other shoreline property not owned or controlled by the applicant.

**16.8(2)** A commercial dock on a natural lake may be permitted to extend a maximum of 300 feet from the water's edge. However, the applicant must provide justification for a length greater than 150 feet and demonstrate that there are no appropriate alternatives available.

**16.8(3)** The maximum number of hoists or slips authorized by a permit for a commercial dock is one hoist or slip for every 12.5 feet of shoreline. This limit shall not apply where a business operated on the shoreline property primarily involves boat sales, rentals, storage, or other boat services. In calculating the hoist limit, "courtesy" hoists shall not be counted if they are provided without charge to boaters to temporarily moor their boats while they go ashore to access services at a business on the shoreline property.

**16.8(4)** A permit for a commercial dock shall not be issued or the permit will include restrictions as needed to prevent uses of the dock that would be incompatible with zoning of the shoreline property from which the dock extends (in-

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cluding special exception uses or variances recognized by the local governing body).

**16.8(5)** Authorization for roofs or sides on commercial docks or slips may be restricted as needed to minimize adverse visual impact on owners of other property and the public.

**16.8(6)** Each mooring site (slip) shall be marked by an identifying number or letter, in block style at least 3 inches high, of contrasting color, and located uniformly near the vessel's bow.

**571—16.9(461A,462A) Exceptions for renewal of permits for existing docks.** Permits shall include exceptions to the length limits in 16.7(2) and 16.8(2) for docks up to 300 feet long that were lawfully installed and maintained before the effective date of the length limits. Permits shall include exceptions to the hoist limit in 16.7(3) and 16.8(3), and to the platform size limit in 16.7(4) for docks and hoists that were lawfully installed and maintained before the effective date of the limits. An exception to the offset requirements in 16.3(3) shall be granted under the following circumstances: with written consent of each affected adjoining property owner; when the applicant provides an affidavit attesting that the affected adjacent property owner named in the affidavit has verbally given the applicant consent for the requested exception; or when the adjoining shoreline parcel is burdened by restrictive covenants, easements, or other valid use restrictions which impose on the owner of the parcel an obligation to tolerate docks and hoists that would otherwise violate the offset or gap requirements in 16.3(3).

**571—16.10(461A,462A) Exceptions for new structures.** Permits may include exceptions to the length limit in 16.7(2), the hoist limit in 16.7(3) and 16.8(3), and the platform size limit in 16.7(4) if the applicant justifies the need for an exception and proposes a configuration of dock(s) and hoists that minimizes adverse impacts on the water body and other users. An exception to the offset requirements in 16.3(3) may be granted under the circumstances listed in 16.9(461A,462A).

**571—16.11(461A,462A) Docks advisory committees.** The department's law enforcement bureau shall establish a docks advisory committee comprised of citizen volunteers for the Iowa Great Lakes and a committee for Clear Lake. Each committee shall consist of seven people, selected by the district law enforcement supervisor to represent, to the extent practical, the following different interests: one person representing commercial docks; one person representing private docks serving individual residences; one person representing private docks serving condominium-type or time-share residential complexes; one person representing a local governmental body; and three people representing the interests of the general public. Before granting a permit that includes an exception under 16.10(461A,462A) or a permit for new or larger commercial dock facilities, the law enforcement bureau shall provide copies of the application to members of the applicable docks advisory committee and shall allow a minimum of 14 days for comments from any member. Vacancies on an advisory committee shall not be a basis for delaying the permit process. The law enforcement bureau shall establish the advisory committees as soon as practical after the effective date of this rule. This authorization for the advisory committees shall terminate if not renewed by December 15, 2012.

**571—16.12(461A,462A) Initial decision and right of appeal.** The district law enforcement supervisor shall issue an initial decision in the form of a permit or a permit denial. The granting of any request for an exception under 16.10(461A, 462A) shall require approval from the law enforcement bu-

reau chief or the chief's designee. If the district law enforcement supervisor decides to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case under 571—Chapter 7. If a request for an exception under 16.10(461A,462A) is disapproved by the law enforcement bureau chief or designee, the applicant may request a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11.

**571—16.13(461A,462A) Application form and administrative fees.**

**16.13(1)** The applicant for a permit for an individual private dock serving one or more residences or for a commercial dock shall submit to the department a completed application on the applicable DNR dock permit application form. If the applicant is not the owner of the shoreline property from which the dock extends, the applicant shall identify the contractual relationship between the applicant and each property owner and shall submit as part of the application the written consent from each owner. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each boat hoist, slip, platform, catwalk, buoy, or other structure to be maintained in front of the shoreline property. Docks in front of nonadjoining shoreline properties on the same water body owned by the same person or legal entity may be included in one application. An application for renewal of a permit for an existing dock and hoists must specifically describe each requested modification. The applicant shall submit an administrative fee with the application. The completed application form and payment shall be submitted to the department's district law enforcement office in the district where the proposed dock is located. The application will be assigned to a conservation officer to investigate.

**16.13(2)** The permit application fee shall be \$125 for one or more individual private docks and \$250 for one or more commercial docks. A private dock permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of four hoists or slips. A commercial dock permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of six hoists or slips, except for each hoist or slip designated in the permit as "courtesy" mooring for customers and affixed with a sign identifying it as a courtesy hoist or slip. The hoist/slip fee shall be due on March 1 of each year or whenever a permit is modified by adding a hoist or slip. Any fees owed to the department must be paid in full prior to the installation of any portion of an individual private dock or commercial dock and before a boat is placed in a hoist or slip. The department may waive the permit application fee if the application is for a minor modification of an existing permit without an extension of the term of the permit.

**571—16.14(461A,462A) Application forms.** Reserved.

**571—16.15 and 16.16** Reserved.

**571—16.17(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.**

**16.17(1)** Duration and transferability of dock permits; administrative fee refunds. Each dock permit shall be issued for a term of five years unless a shorter term is needed due to specified circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense

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in investigating the application. A dock permit is not automatically transferable to a new owner of the shoreline property. A purchaser of shoreline property who acquires an existing permitted dock in the real estate transaction must request approval for transfer of the permit.

**16.17(2)** Suspension, modification, or revocation of permits. A dock permit may be modified, suspended, or revoked, in whole or in part, by written notice served in compliance with Iowa Code section 17A.18, if the director determines that the dock is a hazard to other users of the water body, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is contrary to the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken, or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect and suspended permits shall be reinstated, modified, or revoked.

**16.17(3)** Investigation of complaints. Any person adversely affected by a permitted dock or associated boat hoist may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

**16.17(4)** Determining property boundaries. An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

**571—16.18(461A,462A) Exemptions from winter removal requirement.** This rule provides for exemptions from the general requirement in Iowa Code section 462A.27 that non-permanent structures be removed on or before December 15 of each year. Docks and other structures subject to destruction or damage by ice movement must be removed. Where a dock may be left in ice without damage to the dock, it must have reflective material visible from all directions to operators of snowmobiles or other motorized machines lawfully operated on the frozen surface of the water body. Generally, ice damage is greatest on Iowa's rivers and natural lakes. Docks must be removed by December 15 of each year unless they have the required reflective materials and are specifically exempted by a condition of a dock permit or located in one of the areas listed as follows: artificial lakes; Upper Gar Lake; canals off West Okoboji Lake; Okoboji Harbor; Lazy Lagoon portion of Triboji dock management area; Smith's Bay on West Okoboji Lake; area between the trestle and U.S. Highway 71 bridges on Okoboji lakes; Templar Park on Big Spirit Lake; Venetian Village Canal and Harbourage Inlet on Clear Lake; Casino Bay of Storm Lake; and canals off Lake Manawa and Carter Lake. A permit shall not authorize an exception from the winter removal requirement unless the applicant

provides adequate documentation that the dock will not be damaged by normal ice movement.

**571—16.19(461A,462A) General conditions of all dock permits.** All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

**16.19(1)** All activities and structures authorized by a dock permit must comply with the requirements of the permit, and the permittee shall maintain the structure or work authorized by the permit.

**16.19(2)** The permit creates no interests, personal or real, in the real estate below the ordinary high water line nor does it relieve the requirement to obtain federal or local assent when required by law for such activity. The permit does not authorize the permittee to prevent the public from using areas of the water body adjacent to the permitted structure. However, a lawfully permitted private dock or commercial dock is property of the permittee. Use of the dock is reserved to the permittee and the permittee's invitees.

**16.19(3)** A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

**16.19(4)** The permittee shall not charge a fee for use of the dock or associated structure unless: the permit is for a commercial dock; the fee is expressly authorized by the permit; or the permittee is a homeowners association and the fee is for recovery of expenses incurred in providing access to association members.

**571—16.20(461A,462A) Permit criteria for rafts, platforms, or other structures.** A raft, platform, or other structure maintained on a public water body requires authorization in a permit. The raft, platform, or other structure may not be placed more than 250 feet from the shoreline and shall be equipped with reflectors that are visible from approaching boats.

**571—16.21 to 16.24** Reserved.

**571—16.25(461A) Designation or modification of dock management areas.**

**16.25(1)** Purposes and status of dock management areas. The director may designate an area of public land under the commission's jurisdiction and adjoining water as a dock management area. Docks in a dock management area are public docks. However, the dock permittees have priority use of the docks for mooring of vessels. The docks may be used by the public for fishing and emergency mooring when public use does not interfere with the permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee. The department intends to authorize continuation of all dock management areas existing on June 1, 2006, unless adverse impacts require changes in the size of an existing dock management area.

**16.25(2)** Criteria for designation or enlargement. In designating a dock management area or authorizing enlargement of an existing dock management area, the director shall apply the following criteria:

a. The shoreline property in question shall be public land and shall have been developed and managed for recreational access to water.

b. The establishment or enlargement of a dock management area shall not adversely affect other public recreational use of the water body.

c. A dock management area shall not be established or enlarged where depth or bottom configuration is incompatible with the placement of docks.

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d. A dock management area shall not be established or enlarged where fish and wildlife habitat, other natural resources or scenic features would be disturbed by the presence of docks.

e. Documentation of need for a new or larger dock management area and the lack of adverse impacts of the proposal must be sufficient to clearly outweigh and overcome a presumption against increasing the number or size of dock management areas.

**571—16.26(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas.** A dock site permit authorizes a person to install and maintain a public dock in a designated dock management area. Each permit shall identify the number of hoists or slips to be included for storage of boats at the dock. A separate hoist or slip assignment will be issued for each hoist or slip space at the dock. For purposes of these dock management area rules, “permittee” means the person(s) to whom a dock permit is issued and the person(s) to whom each hoist or slip assignment is issued. Application forms for dock site permits and hoist or slip assignments in a dock management area will be made available at a nearby DNR office. Dock site permits and hoist or slip assignments shall be available to all members of the public through a selection process. Selection shall be based on the following order of priorities, and a waiting list shall be established that follows the same order of priorities. First priority is for owners of residences adjoining or immediately across a street from the public land; second priority is for owners of other residences within the housing association or subdivision adjoining or immediately across a street from the public land; third priority is for all other Iowa residents; fourth priority is for nonresidents. The order of priorities, changes in the number of residential units per dock site, and changes in the number of vessels per residential unit will be made effective as existing permits expire. For purposes of these dock management area rules, “residence” means a single residential living unit, which may be a rental unit. Notwithstanding these priorities, if property in the first or second priority category is redeveloped with higher density residential living units, there is no assurance that dock, hoist or slip space will be available to accommodate such increased density before other property included in the first or second priority categories.

**571—16.27(461A) Standard requirements for dock management area docks.** Docks in dock management areas shall conform to the following requirements:

**16.27(1) Occupancy of docks.** At least two residences shall share a dock. The department may require that more residences share a dock if there is a waiting list including people in the first or second priority categories established in 16.26(461A). A maximum of six residences shall share a dock.

**16.27(2) Spacing and alignment.** Dock sites where feasible shall be at least 50 feet apart.

**16.27(3) Dimensions.**

a. Length. A dock may extend the greater of 100 feet from the water’s edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet, but the dock shall be no longer than the length for which the applicant provides justification, and the length shall be stated in the permit.

b. Width. Docks shall be at least 4 feet wide and no more than 6 feet wide.

**16.27(4) Configuration.**

a. “L” or “T” segments. A dock shall have no more than one “L” or “T” segment. The total length of the “L” or “T” segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the “L” or “T” segment shall not exceed 200 square feet. That part of the main dock forming the center of a “T” segment or an extension of an “L” segment shall be included in measuring the area of the “T” or “L” segment. A smaller platform size limit may be required at locations specified by the department as having limited available space.

b. Catwalks. Catwalks shall be at least 2 feet wide and considered as part of the dock. The length limit for an “L” or “T” segment stated in paragraph “a” shall be applicable to each catwalk. A catwalk shall not extend beyond the width of the hoist.

c. Hoists. A hoist or other boat storage structure shall not be placed adjacent to any “L” or “T” segment of a dock or adjacent to any other part of a dock that is more than 6 feet wide. The hoist shall not exceed 10 feet in width at locations specified by the department as having limited available space.

**16.27(5) Exceptions for certain dock management areas.**

a. In artificially constructed lagoon or harbor areas, the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis, taking into consideration the physical characteristics of the area, the mooring pattern of boats and public safety. A maximum of two residences, each in accordance with 16.26(461A), shall share a single dock site.

b. In the dock management areas at Lake Macbride, the Clear Lake Harbourage, and Lake Odessa, occupancy and the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis, taking into consideration the physical characteristics of the area, the mooring pattern of boats and public safety.

**16.27(6) Display of dock management area sign.** Each individual dock site shall be marked with a sign provided by the department. The end of the dock facing the water shall be marked with the DMA name and dock number as assigned by the department.

**16.27(7) Other requirements.** Standard requirements found in 16.3(461A,462A) shall apply to all docks in a dock management area except requirements relating to property line offsets and display of information.

**571—16.28(461A) Dock management area permit restrictions and conditions.** The following conditions and restrictions shall apply to docks in a dock management area.

**16.28(1) Use of dock for mooring.** Only the persons named as permittees shall have use of the dock for mooring. All vessels must be registered to the permittees and listed on the dock management area permit. A dock site permit or hoist/slip assignment may authorize an exception to allow a vessel of a tenant of the permittee’s residential rental unit.

**16.28(2) Equitable sharing of dock costs.** Permittees shall agree on the equitable sharing of the cost of construction, installation, maintenance and removal of the dock and any other component of the dock.

**16.28(3) Number of assignments allowed.** Only one dock assignment may be allocated to a residence.

**16.28(4) Number of hoists allowed.** Each permittee may be limited to one hoist for one vessel. The number of hoists and vessels for each permittee should be limited, especially when there is a waiting list that includes people in the first or second priority category established in 16.26(461A).

**16.28(5) Nontransferability of dock permits and privileges.** Dock permits and hoist or slip assignments shall not

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be transferred, assigned or conveyed by the permittee to any other person.

**16.28(6) Liability insurance.** Prior to constructing a dock or installing hoists, the dock site permittee shall provide proof of current liability insurance policy in the amount of \$1 million that names the department as an additional insured party.

**16.28(7) Winter storage of docks, catwalks and hoists on public property.** Winter storage of docks, catwalks and hoists on public property shall not be allowed unless specifically authorized by a dock site permit or hoist assignment. Docks, hoists and catwalks shall be stored at locations determined by the state parks bureau district supervisor as appropriate for an individual dock management area. A dock, catwalk or hoist stored on public land without authorization from the department may be removed by the department at the owner's expense.

**16.28(8) Land use restrictions.** Nothing shall be constructed or placed on public land adjacent to any dock in a dock management area under this rule unless the construction or placement is a necessary appurtenance to the dock as determined by the director.

**16.28(9) Expiration of permits.** The term of a dock site permit and a hoist or slip assignment shall not exceed five years. Renewals shall be requested on a current application form.

**16.28(10) Cancellation for nonuse.** A dock site permit or hoist/slip assignment may be canceled for nonuse in order to provide space for applicants on a waiting list.

**16.28(11) Other permit restrictions and conditions.** All restrictions and conditions in 16.19(461A,462A), except subrule 16.19(3), shall apply to all docks in a dock management area.

**571—16.29(461A) Fees for docks in dock management areas.** Payment of the annual dock site permit fee shall be made upon application. Payment of the annual hoist or slip fee shall be made upon application for the hoist or slip assignment. These fees may be paid in a lump sum in advance for the term of the permit or assignment. Failure to pay the annual fee by April 1 of any year may result in revocation or cancellation of the permit or assignment. Payment of any dock management area fee under this rule shall be made to the department of natural resources as specified in the permit.

	Dock Fee	Hoist Fee
Beed's Lake	\$100	\$50
Black Hawk Lake Marina	\$200	\$50
Black Hawk Lake/Denison	\$200	\$50
Black Hawk North Shore	\$200	\$50
Blue Lake	\$100	\$50
Clear Lake Ventura Heights	\$250	\$50
Clear Lake Harbourage	\$600	\$100 – hoist or slip fee
Clear Lake North Shore	\$250	\$50
East Okoboji Beach	\$250	\$50
Triboji Lakeshore	\$250	\$50
Triboji Lazy Lagoon	\$250	\$50 – hoist or slip fee
Pillsbury Point	\$250	\$50
Lower Pine Lake	\$100	\$50
Lake Macbride The Pines	\$600	\$100 – slip fee
Lake Macbride Lakecrest	\$600	\$100 – slip fee
Rice Lake	\$100	\$50
Union Grove	\$100	\$50
Lake Odessa	\$100	\$25

**571—16.30(461A) Suspension, modification or revocation of dock management area permits.** A dock management area permit may be modified, suspended, or revoked, in

whole or in part, by written notice, if the director determines that the dock is not safe, that a violation of any terms or conditions of the permit or these rules has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may file a notice of appeal, requesting a contested case pursuant to 571—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

**571—16.31(461A) Persons affected by DMA permit—hearing request.** Any person who claims that riparian or littoral property rights are adversely affected by a DMA dock site permit may request, in writing, a hearing to reconsider the permit. Requests for hearings shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

## ARC 5539B

PROFESSIONAL LICENSING AND  
REGULATION BUREAU[193]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Bureau hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Chapter 2, “Allocation of Disciplinary Fees and Costs,” Chapter 3, “Vendor Appeals,” Chapter 4, “Proof of Legal Presence,” Chapter 5, “Waivers and Variances from Rules,” Chapter 6, “Investigatory Subpoenas,” Chapter 7, “Contested Cases,” Chapter 8, “Denial of Issuance or Renewal of License for Nonpayment of Child Support or Student Loan,” Chapter 9, “Petition for Rule Making,” Chapter 10, “Declaratory Orders,” Chapter 11, “Sales of Goods and Services,” Chapter 12, “Impaired Licensee Review Committees,” and Chapter 13, “Public Records and Fair Information Practices,” Iowa Administrative Code.

These amendments implement changes necessitated by the enactment of 2006 Iowa Acts, House File 2521, sections 50 and 52, which merged the Professional Licensing and Regulation Division with the Banking Division under the Department of Commerce. Under this new arrangement, the Professional Licensing and Regulation Division became a bureau within the Banking Division. These amendments also reflect the addition of the Interior Design Examining Board established in Iowa Code chapter 544C (Supp 2005).

Additional amendments include the implementation of an amendment to Iowa Code section 22.3(1) (Supp 2005) regarding requests for public records and include technical corrections to update the street address of the boards and to

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

update cross references for the Accountancy Examining Board from Iowa Code chapter 542C to Iowa Code chapter 542. Amendments are also included to reflect the statutory change that increased the number of Real Estate Commission members from five to seven and to implement changes to Iowa Code chapter 68B that relate to the sale or lease of goods and services.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments received on or before November 28, 2006, concerning the proposed amendments. Comments should be addressed to Glenda Loving, Professional Licensing and Regulation Bureau, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [glenda.loving@iowa.gov](mailto:glenda.loving@iowa.gov).

These amendments are intended to implement Iowa Code chapters 17A, 22, 68B, 252J, 272C, 542, 543B, 543D, 544A, 544B and 546 and Supplement chapter 544C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rules 193—1.1(546) and 193—1.2(546) as follows:

**193—1.1(546) Purpose of chapter 1.** This chapter describes the organization and operation of the professional licensing and regulation ~~division~~ *bureau of the banking division* (hereinafter referred to as the “~~division~~ *bureau*”), including the office where, and the means by which, any interested person may obtain public information and make submittals or requests.

**193—1.2(546) Scope of rules.** The rules for the ~~division~~ *bureau* are promulgated under Iowa Code chapter 17A and ~~section sections 546.3 and 546.10~~, and shall apply to all matters before the ~~division~~ *bureau*. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various boards of the ~~division~~ *bureau* from any duty under the laws of this state.

ITEM 2. Amend rule 193—1.3(546), definitions of “administrator,” “board,” “division,” “license,” “licensee” and “staff,” as follows:

“Administrator” means the ~~administrator of professional licensing and regulation, the chief administrative officer of the professional licensing and regulation division of the department of commerce~~ *superintendent of banking*.

“Board” means an examining board or commission within the professional licensing and regulation ~~division~~ *bureau*.

“~~Division~~ *Bureau*” means the professional licensing and regulation ~~division~~ *bureau* of the ~~banking division of the department of commerce~~.

“License” means any license, registration, certificate, or permit that may be granted by an examining board or commission within the professional licensing and regulation ~~division~~ *bureau*.

“Licensee” means any person granted a license by an examining board or commission within the professional licensing and regulation ~~division~~ *bureau*.

“Staff” means employees assigned to the professional licensing and regulation ~~division~~ *bureau*.

ITEM 3. Amend rule 193—1.4(546) as follows:

**193—1.4(546) Purpose of ~~division~~ *the bureau*.** The ~~division~~ *bureau* exists to coordinate the administrative support for the following ~~six~~ *seven* professional licensing boards:

**1.4(1)** The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of four professional engineers, one land surveyor, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C]—Chapters 1 to ~~7~~ *13*, Iowa Administrative Code.

**1.4(2)** The accountancy examining board is an eight-member board, appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed ~~accounting practitioner~~ *public accountant*. The board administers Iowa Code chapter ~~542C~~ *542*, Public Accountants, and board rules published under agency number [193A]—Chapters 1 to ~~18~~ *19*, Iowa Administrative Code.

**1.4(3)** The real estate commission is a ~~five~~ *seven*-member commission appointed by the governor and confirmed by the senate. It is composed of ~~three~~ *five* members licensed under Iowa Code chapter 543B and two public members. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, ~~Time-Share Act~~ *Time-Shares*; and commission rules published under agency number [193E]—Chapters 1 to ~~7~~ *21*, Iowa Administrative Code.

**1.4(4)** The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered architects and two public members. The board administers Iowa Code chapter 544A, Registered Architects, and board rules published under agency number [193B]—Chapters 1 to ~~9~~ *7*, Iowa Administrative Code.

**1.4(5)** The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered landscape architects and two public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D]—Chapters 1 to ~~7~~ *4*, Iowa Administrative Code.

**1.4(6)** The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F]—Chapters 1 to ~~14~~ *15*, Iowa Administrative Code.

**1.4(7)** *The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered interior designers and two public members. The board administers Iowa Code Supplement chapter 544C, Registered Interior Designers, and board rules published under agency number [193G]—Chapters 1 and 2, Iowa Administrative Code.*

ITEM 4. Amend rules 193—1.5(546) to 193—1.8(546) as follows:

**193—1.5(546) Offices and communications.** Correspondence and communications with the ~~division~~ *bureau* or the boards in the ~~division~~ *bureau* shall be addressed or directed to their offices at ~~1918~~ *1920* S.E. Hulsizer ~~Avenue~~ *Road*, Ankeny, Iowa 50021. Each of the boards may be contacted



## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

through the ~~division~~ *bureau* telephone number (515)281-5602 5910.

**193—1.6(546) Responsibilities of the boards.** Each ~~All~~ of the boards in the ~~division~~ *bureau* retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters. Each board shall adopt rules pursuant to Iowa Code chapter 17A. Decisions by each board are final agency actions for purposes of Iowa Code chapter 17A.

**193—1.7(546) Responsibilities of the administrator.**

**1.7(1)** To make rules pursuant to Iowa Code chapter 17A to implement ~~division~~ *bureau* duties except to the extent that rule-making authority is vested in the boards in the ~~division~~ *bureau*.

**1.7(2)** To carry out policy-making and enforcement duties assigned to the ~~division~~ *bureau* under the law.

**1.7(3)** To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the ~~division~~ *bureau* and the boards in the ~~division~~ *bureau*, including hiring a *bureau chief* to perform such administrative duties as may be assigned by the administrator and designating staff to act as the executive officer for and lawful custodian of the records of each board in the *bureau*.

**1.7(4)** To coordinate the development of an annual budget for the ~~division~~ *bureau* and the boards in the ~~division~~ *bureau*.

**1.7(5)** To supervise and direct personnel and other resources to accomplish duties assigned to the ~~division~~ *bureau* under law.

**1.7(6)** To authorize expenditures from any appropriation or trust fund established on behalf of the ~~division~~ *bureau*.

**1.7(7)** Except to the extent that decision-making authority is vested in the boards in the ~~division~~ *bureau* or other body, decisions of the administrator are final agency actions pursuant to Iowa Code chapter 17A.

**1.7(8)** Except to the extent otherwise vested in the boards in the ~~division~~ *bureau*, the administrator has the authority to establish fees assessed to the regulated industry.

**193—1.8(546) Custodian of records, filings, and requests for public information.** Unless otherwise specified by the rules of the boards in the ~~division~~ *bureau*, the ~~division~~ *bureau* is the principal custodian of its own ~~divisional~~ orders, statements of law or policy issued by the ~~division~~ *bureau*, legal documents, and other public documents on file with the ~~division~~ *bureau*.

Any interested party may examine all public records promulgated or maintained by the ~~division~~ *bureau* at its offices during regular business hours. The offices of the ~~division~~ *bureau* and the boards in the ~~division~~ *bureau* are open from 8 a.m. until 4:30 p.m., Monday through Friday. The offices are closed Saturdays, Sundays, and official state holidays.

ITEM 5. Amend subrules 1.9(1) and 1.9(4) as follows:

**1.9(1)** The administrator or administrator's designee may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, and board news, and matters related thereto.

**1.9(4)** All newsletter advertising must be consistent with the boards' missions. The primary mission of the boards in the ~~division~~ *bureau* is to provide progressive, efficient and professional regulation and enforcement of the professions; to protect the public through examination, licensing and regulation of the professions; and to enhance economic growth through the responsible, competent, and ethical performance of the professions.

ITEM 6. Amend **193—Chapter 1**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 546.10 as amended by 2006 Iowa Acts, House File 2521, section 52.

ITEM 7. Amend subrules 2.1(1) to 2.1(5) as follows:

**2.1(1)** Definitions.

"Board(s)" shall include the professional licensing boards and commission within the professional licensing and regulation *bureau of the banking division* of the department of commerce.

"~~Division~~ *Bureau*" means the professional licensing and regulation *bureau of the banking division* of the department of commerce.

**2.1(2)** All hearing fees and costs assessed by the boards shall be paid directly to the ~~division~~ *bureau* and shall be held in a separate fund administered by the ~~bureau chief of administrative services of the department of commerce~~ administrator.

**2.1(3)** The ~~bureau chief of administrative services~~ administrator shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the ~~division~~ *bureau*. Distributions from the fund shall be made upon the request of a board and in the sole discretion of the ~~bureau chief of administrative services~~ administrator. A distribution received by a board under this chapter shall be used only for expenditures related to disciplinary hearings.

**2.1(4)** The ~~bureau chief of administrative services~~ administrator shall consider the following factors in exercising discretion as to whether to distribute funds to a requesting board:

a. to c. No change.

**2.1(5)** The ~~bureau chief of administrative services~~ administrator shall, within 45 days from the end of the fiscal year, distribute to the boards the remaining amount of fees and costs paid to the ~~division~~ during the prior fiscal year. The ~~division~~ shall distribute to each board a percentage of the remaining fees and costs that is equal to the percentage of that board's total allocated budget in relation to the ~~divisionwide~~ *bureauwide* total budget for all professional licensing boards governed by this chapter.

ITEM 8. Amend rule 193—3.1(546) as follows:

**193—3.1(546) Purpose.** This chapter outlines a uniform process for vendor appeals for all boards in the ~~division~~ *bureau*. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of ~~general~~ administrative services.

ITEM 9. Amend rule **193—3.4(546)** as follows:

Add the following new sentence at the end of the introductory paragraph:

The appealing vendor may also request that an administrative law judge act as presiding officer pursuant to 193 IAC 7.10(2).

Amend subrules 3.4(2) and 3.4(5) as follows:

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

**3.4(2)** Notice of an appeal for review of a proposed decision or notice of the board's own review shall be mailed to all parties by the board's executive ~~secretary~~ *officer*. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The board's executive ~~secretary~~ *officer* shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or on the Iowa communications network. The executive ~~secretary~~ *officer* shall schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

**3.4(5)** Each party shall have the opportunity to file exceptions and present briefs. The executive ~~secretary~~ *officer* may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive ~~secretary~~ *officer* shall notify all parties of the date, time and location at least ten days in advance.

ITEM 10. Amend **193—Chapter 3**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 546.10 *as amended by 2006 Iowa Acts, House File 2521, sections 52*.

ITEM 11. Amend rule 193—4.1(546) as follows:

**193—4.1(546) Purpose.** This chapter outlines a uniform process for applicants and licensees of all boards in the ~~division~~ *bureau* to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621).

ITEM 12. Amend rule 193—4.3(546) as follows:

**193—4.3(546) Acceptable evidence.** The ~~division~~ *bureau* shall accept as proof of lawful presence in the United States documents outlined in Lists A and B below. The ~~division~~ *bureau* will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained in computer "imaged" format. Legible copies will be accepted. Original documents will not be required unless a question arises concerning the documentation submitted.

ITEM 13. Amend **193—Chapter 4**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 546 *as amended by 2006 Iowa Acts, House File 2521, sections 50 and 52*.

ITEM 14. Amend rules 193—5.1(17A,546) to 193—5.3(17A,546) as follows:

**193—5.1(17A,546) Definition Definitions.** For purposes of this chapter, "a waiver or variance" means action by a ~~division~~ board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance." "*Board*" includes every board and commission in the professional licensing and regulation bureau of the banking division of the department of commerce.

**193—5.2(17A,546) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by ~~division~~ boards in situations where no other more specifically applica-

ble law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**193—5.3(17A,546) Applicability.** A ~~division~~ board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. A ~~division~~ board may not waive requirements created or duties imposed by statute.

ITEM 15. Amend rule 193—5.4(17A,546), introductory paragraph, as follows:

**193—5.4(17A,546) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 5.6(17A,546), a ~~division~~ board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

ITEM 16. Amend subrule 5.5(3) as follows:

**5.5(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive ~~secretary~~ *officer*.

ITEM 17. Amend rules 193—5.7(17A,546) and 193—5.12(17A,546) as follows:

**193—5.7(17A,546) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive ~~secretary~~ *officer*, a committee of the board, or a quorum of the board.

**193—5.12(17A,546) Summary reports.** Semiannually, each ~~division~~ board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 18. Amend rule 193—5.13(17A,546), introductory paragraph, as follows:

**193—5.13(17A,546) Cancellation of a waiver.** A waiver issued by a ~~division~~ board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

ITEM 19. Amend **193—Chapter 5**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 17A.9A and ~~chapter 546 section 546.10~~ *as amended by 2006 Iowa Acts, House File 2521, section 52*.

ITEM 20. Amend rule 193—6.1(17A,272C,542B,542C,543B,543D,544A,544B) as follows:

**193—6.1(17A,272C,542,542B,542C,543B,543D,544A,544B,544C) Investigatory subpoena authority.** Pursuant



## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

to Iowa Code sections 17A.13(1) and 272C.6(3), all boards, as defined in rule 193—7.1(17A,542,542B,542C,543B,543D,544A,544B,544C), have the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law. To ensure consistency in procedure, all boards will issue investigatory subpoenas according to the uniform procedures set forth in rule 193—6.2(17A,272C,542,542B,542C,543B,543D,544A,544B,544C). Given the range of investigative options otherwise utilized by each board, additional detail on investigative procedures is provided separately in each board's individual rules.

ITEM 21. Amend rule 193—6.2(17A,272C,542B,542C,543B,543D,544A,544B) as follows:

Amend the parenthetical implementation as follows:

**193—6.2(17A,272C,542,542B,542C,543B,543D,544A,544B,544C) Investigatory subpoena procedures.**

Amend subrule 6.2(1), introductory paragraph, as follows:

**6.2(1)** The board's executive ~~secretary~~ *officer* or designee may, upon the written request of a board investigator or on the ~~secretary's officer's~~ own initiative, subpoena books, papers, records, and other real evidence which the ~~secretary officer~~ determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

Amend subrule 6.2(2), introductory paragraph, as follows:

**6.2(2)** A written request for a subpoena or the executive ~~secretary's officer's~~ written memorandum in support of the issuance of a subpoena shall contain the following:

Amend subrule 6.2(3), paragraph "e," as follows:

e. The signature, address and telephone number of the executive ~~secretary officer~~ or designee;

ITEM 22. Amend **193—Chapter 6**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, 542B, 542C, 543B, 543D, 544A, and 544B, and 544C.

ITEM 23. Amend rule 193—7.1(17A,542B,542C,543B,543D,544A,544B) as follows:

Amend the parenthetical implementation as follows:

**193—7.1(17A,542,542B,542C,543B,543D,544A,544B,544C) Definitions.**

Amend the following definitions:

"Board" includes the engineering and land surveying examining board (Iowa Code chapter 542B), the accountancy examining board (Iowa Code chapter 542C 542), the real estate commission (Iowa Code chapter 543B), the real estate appraiser examining board (Iowa Code chapter 543D), the architectural examining board (Iowa Code chapter 544A), and the landscape architectural examining board (Iowa Code chapter 544B), and the interior design examining board (Iowa Code chapter 544C).

"Contested case" means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542, 542B, 542C, 543B, 543D, 544A, or 544B, or 544C; an adversary proceeding requested by a nonlicensee pursuant to Iowa

Code section 542B.27 or 544A.15; or any other proceeding designated a contested case by any provision of law.

"License" means a license, registration, certificate, permit or other form of practice permission required by Iowa Code chapter 542, 542B, 542C, 543B, 543D, 544A, or 544B, or 544C.

ITEM 24. Amend rules 193—7.2(17A,542B,542C,543B,543D,544A,544B,546), 193—7.4(17A,272C), and 193—7.5(17A) as follows:

**193—7.2(17A,542,542B,542C,543B,543D,544A,544B,544C,546) Scope and applicability.** This chapter applies to contested cases conducted by all boards in the ~~division bureau~~.

**193—7.4(17A,272C) Informal settlement.** The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. *The statement of charges and consent order may be separate documents or may be combined in one document.* By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 7.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 7.42(546,272C).

**193—7.5(17A) Statement of charges.** The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges shall be *incorporated within* or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

ITEM 25. Amend subrule 7.6(1), introductory paragraph, as follows:

**7.6(1)** Contents of notice of hearing. Unless *the hearing* is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any *incorporated or* attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

ITEM 26. Amend subrule 7.19(1), introductory paragraph, as follows:

**7.19(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or *each command* may be issued separately. Subpoenas shall be issued by the executive ~~secretary officer~~ or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

ITEM 27. Amend subrule **7.19(3)**, paragraph "i," as follows:

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

i. The signature, address and telephone number of the executive ~~secretary~~ *officer* or designee;

ITEM 28. Amend subrule 7.19(4) as follows:

**7.19(4)** The executive ~~secretary~~ *officer* or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

ITEM 29. Amend subrule 7.22(3) as follows:

**7.22(3)** The board's executive ~~secretary~~ *officer* or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive ~~secretary~~ *officer* or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

ITEM 30. Amend subrules 7.28(6) and 7.28(10) as follows:

**7.28(6)** The executive ~~secretary~~ *officer* or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as ~~they~~ *the executive officer or other persons* are not disqualified from participating in the making of a proposed or final decision under any provision of law and ~~they~~ *the executive officer or other persons* comply with subrule 7.28(1).

**7.28(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the ~~division~~ administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

ITEM 31. Amend subrules 7.30(1) and 7.30(2) as follows:

**7.30(1)** Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive ~~secretary~~ *officer*. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known ~~post office~~ *U.S. Postal Service* address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

**7.30(2)** Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published in the professional licensing and regulation ~~division's~~ *bureau's* newsletter, *may be published on the division's bureau's* Web site, and may be transmitted to the appropriate professional association(s), national associations, other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

ITEM 32. Amend rule 193—7.39(546,272C), introductory paragraph, as follows:

**193—7.39(546,272C) Hearing on license denial.** If the board denies an application for an initial, reciprocal or comity license, the executive ~~secretary~~ *officer* shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the

board denies an application to renew an existing license, the provisions of rule 7.40(546,272C) shall apply.

ITEM 33. Amend rule 193—7.41(546,272C), introductory paragraph, as follows:

**193—7.41(546,272C) Recovery of hearing fees and expenses.** The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated ~~the statutes and rules a statute or rule~~ enforced by the board. Payment shall be made directly to the professional licensing and regulation ~~division~~ *bureau* of the department of commerce pursuant to rule 193—2.1(272C).

ITEM 34. Amend subrules 7.42(1) and 7.42(4) as follows:

**7.42(1)** Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board's executive ~~secretary~~ *officer*, or the board chair or chair's designee.

**7.42(4)** Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive ~~secretary~~ *officer* to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

ITEM 35. Amend subrule 7.43(3) as follows:

**7.43(3)** The board's executive ~~secretary~~ *officer* is authorized to prepare and serve the notice required by *Iowa Code* section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive ~~secretary~~ *officer* shall notify the registrant of the board's intent to revoke the certificate of registration.

ITEM 36. Amend subrule 7.44(3) as follows:

**7.44(3)** The board's executive ~~secretary~~ *officer* is authorized to prepare and serve the notice required by *Iowa Code* section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive ~~secretary~~ *officer* shall notify the registrant of the board's intention to revoke the certificate of ~~license~~ *registration*.

ITEM 37. Amend **193—Chapter 7**, implementation clause, as follows:

These rules are intended to implement *Iowa Code* chapters 17A, 252J, 272C, 542, 542B, 542C, 543B, 543D, 544A, and 544B, and 544C and *Iowa Code* sections 261.126 and 261.127 and section 546.10 as amended by 2006 *Iowa Acts*, *House File 2521*, section 52.

ITEM 38. Amend subrule 8.1(3) as follows:

**8.1(3)** The board's executive ~~secretary~~ *officer* is authorized to prepare and serve the notice required by *Iowa Code* section 252J.8 upon the licensee or applicant.

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

ITEM 39. Amend subrule 8.2(3) as follows:

**8.2(3)** The board's executive ~~secretary~~ *officer* is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

ITEM 40. Amend rule 193—9.3(17A) as follows:

**193—9.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the executive ~~secretary~~ *officer of the board at the board's offices.*

ITEM 41. Amend rule 193—10.5(17A) as follows:

**193—10.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order may be made to the executive ~~secretary~~ *officer of the board at the board's offices.*

ITEM 42. Amend **193—Chapter 11**, title, as follows:

## CHAPTER 11

### SALES AND LEASES OF GOODS AND SERVICES

ITEM 43. Amend rule 193—11.1(68B) as follows:

**193—11.1(68B) Selling or leasing of goods or services by members of the department of commerce examining boards.** The board members shall not sell *or lease*, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of commerce except as authorized by this rule, *and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 as amended by 2006 Iowa Acts, House File 2593, section 2, and the corresponding provisions of rule 351—6.11(68B).*

**11.1(1)** Conditions of consent for members. Consent shall be given by a majority of the members of the board *upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351 IAC 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351 IAC 6.11(4) and the granting of single consents is impractical or impossible to determine. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department of commerce unless all of the following conditions are met:*

a.—~~The official requesting consent does not have authority to determine whether consent should be given.~~

b.—~~The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.~~

c.—~~The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department of commerce.~~

d.—~~The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association, or corporation.~~

**11.1(2)** Authorized sales *and leases.*

a. A member of a department of commerce examining board may sell *or lease* goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale *or lease* of such goods or services does not affect the board member's duties or functions on the board. *Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.*

b. A member of a department of commerce examining board may sell *or lease* goods or services to any individual, association, or corporation regulated by the licensing board or commission of which that person is a member; if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale *or lease* of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the licensing board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case, *as provided, for instance, in the code of administrative judicial conduct at 481 IAC 10.29(3) "b."* *Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The boards intend that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.*

c. Individual application and approval are not required for the sales and leases authorized by this rule *and by the consents filed with the ethics and campaign disclosure board* unless there are unique facts surrounding a particular sale *or lease* which would cause the sale *or lease* to affect the seller's *or lessor's* duties or functions, would give the buyer *or lessee* an advantage in dealing with the board, or would otherwise present a conflict of interest *as defined in Iowa Code section 68B.2A or common law.*

**11.1(3)** Application for consent. Prior to selling *or leasing* a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, *as provided in 351 IAC 6.11(3), unless the sale or lease is specifically allowed in subrule 11.1(2) and in the consents filed with the ethics and campaign disclosure board.* The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale *or lease*. The application should identify the parties to the sale *or lease* and the amount of compensation. The application should also explain why the sale *or lease* should be allowed. *All applications must conform to the requirements of 351 IAC 6.11(3).*

**11.1(4)** Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules. *The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351 IAC 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351 IAC 6.11(6).*

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

ITEM 44. Amend rule 193—12.1(272C) as follows:

Amend the introductory paragraph as follows:

**193—12.1(272C) Impaired licensee review committee.** Pursuant to the authority of Iowa Code section 272C.3(1)“k,” all boards in the ~~division bureau~~ may establish an impaired licensee review committee.

Amend subrule **12.1(1)**, definition of “licensee,” as follows:

“Licensee” means a person licensed under Iowa Code chapter 542, 542B, 542C, 543B, 543D, 544A, ~~or~~ 544B, ~~or~~ 544C.

Amend subrule 12.1(2) as follows:

**12.1(2) Purpose.** The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments *or who are referred to the committee by the board.*

Amend subrule **12.1(3)**, paragraph “c,” as follows:

c. One *or more* licensed professional professionals with expertise in substance abuse/addiction treatment programs or other applicable impairment.

Amend subrule **12.1(4)**, paragraphs “a” and “c,” as follows:

a. The licensee must self-report an impairment or suspected impairment directly to the office of the board *or be referred to the committee by the board;*

c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession, *although the existence of such an order shall not prevent the board from making a referral when deemed in the best interest of the licensee and the public;*

Rescind subrule **12.1(4)**, paragraph “e,” and reletter paragraphs “f” and “g” as “e” and “f.”

Amend subrule **12.1(9)** by adding the following **new** sentence at the end thereof:

A violation of a contract is a ground for licensee discipline.

ITEM 45. Amend rule **193—13.1(17A,22)**, definitions of “agency” and “custodian,” as follows:

“Agency” in these rules means each board within the Iowa professional licensing and regulation ~~division bureau~~.

“Custodian” in these rules means each board within the Iowa professional licensing and regulation ~~division bureau~~.

ITEM 46. Amend subrules 13.3(1) and 13.3(3) as follows:

**13.3(1) Location of record.** A request for access to a record should be directed to the board which owns or is in physical possession of the record. The request shall be directed to the appropriate board at 1918 1920 S.E. Hulsizer, Ankeny, Iowa 50021. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**13.3(3) Request for access.** Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records ~~record~~ sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board’s response, *unless other arrangements are made to permit production to a person wishing to remain anonymous.* A person shall not be required to give a reason for requesting an open record. ~~While agencies are not required by Iowa Code chapter 22 to respond to requests for public records which are not made in person,~~

~~the boards will respond to such requests as reasonable under the circumstances.~~

ITEM 47. Amend rule 193—13.6(17A,22) as follows:

**193—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.**

Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. ~~Requester~~ *The requester* shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at 1918 1920 S.E. Hulsizer, Ankeny, Iowa 50021. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester’s representative.

ITEM 48. Amend rule **193—13.12(17A,22,544A)** as follows:

Amend the parenthetical implementation by striking the reference to “544A.”

Amend subrule **13.12(2)**, paragraphs “e,” “f” and “g,” as follows:

e. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination. (Iowa Code sections 542.17, 542B.32, 542C.16, 543B.52, 543D.8, ~~544A.22~~ 544A.27, 544B.8)

f. Criminal history or prior misconduct of an applicant for licensure. (Iowa Code sections 542.17, 542B.32, 542C.16, 543B.52, 543D.12, 544A.27, 544B.8)

g. Information relating to the contents of an examination for licensure. (Iowa Code sections 542.17, 542B.32, 542C.16, 543B.52, 543D.12, 544A.27, 544B.8)

ITEM 49. Amend rule **193—13.13(17A,22,544A)** as follows:

Amend the parenthetical implementation by striking the reference to “544A.”

Amend subrule **13.13(4)**, paragraphs “a,” “b,” “d” and “e,” as follows:

a. Transcripts from education programs. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.13, 542C.5, 543B.15, 543D.9, 544A.8, and 544B.9, *and* 544C.5.

b. Applications for examination. This information is collected pursuant to Iowa Code sections 542.4, 542.8, 542B.13, 542C.5, 543B.20, 543D.7, 544A.8, and 544B.9, *and* 544C.5.

d. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code sections 542.5, 542B.13, 542C.4, 543B.15, 543D.12, 544A.27, and 544B.9, *and* 544C.9.

e. Examination scores. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.14, 542C.5, 543B.20, 543D.8, 544A.8, and 544B.9, *and* 544C.5.

Amend subrule **13.13(5)**, paragraphs “a” and “b,” as follows:

a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code sections 542.10, 542B.21, 542C.5, 543B.15, 543D.10, 544A.8, and 544B.15, *and* 544C.6.

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

b. Verification of licensure by another board. This information is collected pursuant to Iowa Code sections 542.8, 542.19, 542B.20, 542C.5, 543B.21, 543D.11, 544A.8, and 544B.10, and 544C.6.

Amend subrules 13.13(6) and 13.13(7) as follows:

**13.13(6)** Firm and business entity registrations and renewals. This information is collected pursuant to Iowa Code sections 542.7, 542.8, 542C.18, 543B.28, and 544A.21.

**13.13(7)** Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 542C.5, 543B.28, 543D.16, 544A.10, and 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

ITEM 50. Amend rule **193—13.14(22,544A)** as follows:

Amend the parenthetical implementation by striking the reference to “544A.”

Amend subrules 13.14(4) and 13.14(5) as follows:

**13.14(4)** Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 13.12(2), paragraphs “c” and “d.” These records may contain information about individuals collected under the authority of Iowa Code sections 542.10, 542B.21, 542C.22, 543B.29, 543D.17, 544A.13, and 544B.15, and 544C.9.

**13.14(5)** Policy manuals. The agency employees’ manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. ~~Subscriptions to all or part of the employees’ manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board’s office.~~ Policy manuals do not contain information about individuals.

## ARC 5517B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, “Licensure of Optometrists,” and Chapter 181, “Continuing Education for Optometrists,” Iowa Administrative Code.

The proposed amendments amend subrule 180.5(5) to correct a typographical error, amend paragraphs 181.2(1)“b” and 181.3(2)“b” to make them consistent with other board rules, and amend paragraph 181.3(2)“c” to lengthen the implementation time set forth in the paragraph to allow sufficient preparation time for providers of continuing education and to correct a category reference.

Any interested person may make written comments on the proposed amendments no later than November 28, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building,

Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on November 28, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 180.5(5) as follows:

**180.5(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license ~~buy~~ but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 2. Amend subrule **181.2(1)**, paragraph “b,” as follows:

b. Requirements for therapeutic licensees. Each biennium, each person who is licensed to practice as a therapeutic licensee in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. ~~Therapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement regardless of the licensee’s place of residence or place of practice.~~

ITEM 3. Amend subrule **181.3(2)**, paragraph “b,” as follows:

b. The maximum number of hours in each category in each biennium is as follows:

(1) ~~Twelve~~ Ten hours of credit for local study group programs that meet the criteria.

(2) Ten hours of credit for correspondence courses, which include written and electronically transmitted material and have a postcourse test *posttest*. Certification of the continuing education requirements and of passing the test must be given by the institution providing the continuing education, and that institution must be accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education.

(3) to (6) No change.

~~(7) Twenty hours of credit in the treatment and management of ocular disease from an accredited school of optometry.~~

ITEM 4. Amend subrule **181.3(2)**, paragraph “c,” introductory paragraph and subparagraph (3), as follows:

c. Required continuing education hours. Beginning with the July 1, 2006 2008, biennium, therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for the biennium. If the licensee does not have current proof of CELMO certification, then the following are required *in order* to meet the continuing education requirement in paragraph 181.2(1)“b”:

(3) Ten additional hours required from any of the COPE Categories of A (*Clinical Optometry*), B, C (*Clinical Optom-*

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

etry) or and D (Optometric Business Management). Hours obtained in Category D may not exceed 6 hours of the total continuing education hours requirement.

**ARC 5522B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 326, "Licensure of Physician Assistants," Iowa Administrative Code.

These proposed amendments clarify requirements concerning educational course documentation provided by an approved physician assistant program, clarify that a physician assistant may be taught new procedures under either direct or remote supervision, clarify the dual responsibility of both physician and physician assistant to be aware of who is designated as the supervising physician, and change the time frames for notifying the Board when supervisory changes occur.

Any interested person may make written comments on the proposed amendments no later than November 28, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on November 28, 2006, from 9:30 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 326.3(2) as follows:

**326.3(2)** The applicant must comply with subrule 326.2(1), with the exception of ~~paragraph~~ *paragraphs "d" and "e."*

ITEM 2. Adopt the following new subrule:

**326.3(7)** The applicant shall ensure that certification of completion is sent to the board directly from an approved program for the education of physician assistants. The certification of completion must be signed by a designee from the approved program.

ITEM 3. Amend subrule **326.8(1)**, paragraph "**b**," as follows:

~~b. Within 90 days of any change in supervisory relationship or change in supervisory physicians. At the time of license renewal. The physician assistant shall notify the board of the identity of the physician assistant's supervising physicians and of any change in the status of the supervisory relationships during the physician assistant's current biennium.~~

ITEM 4. Rescind subrule **326.8(1)**, paragraph "**c**," and reletter paragraph "**d**" as "**c**."

ITEM 5. Amend subrule 326.8(4), introductory paragraph, as follows:

**326.8(4)** It shall be the responsibility of the physician assistant ~~with and~~ a supervising physician to ensure that the physician assistant is adequately supervised. ~~The physician assistant shall notify the supervising physician(s) that the physician is listed with the board as a supervising physician. The physician assistant and supervising physician shall mutually coordinate their schedule. The physician assistant and the supervising physician are each responsible for being informed of their respective professional responsibilities.~~

ITEM 6. Amend subrule **326.8(4)**, paragraph "**d**," as follows:

~~d. If the physician assistant is being trained to perform new medical procedures, the training may be carried out only under the direct, personal supervision of a supervising physician or another qualified individual. The physician assistant may not perform a new procedure unless the procedure is delegated by a supervising physician pursuant to 645—subrule 327.1(1).~~

**ARC 5524B****REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes under Title XVI shall be 10 percent for the calendar year 2007 (0.8% per month). The Department shall also pay interest at the 10 percent rate on refunds.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a

## REVENUE DEPARTMENT[701](cont'd)

written request is filed by delivery or by mailing postmarked no later than December 11, 2006, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 28, 2006. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 29, 2006.

This amendment is intended to implement Iowa Code section 421.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 701—10.2(421) by adding the following **new** subrule:

**10.2(26)** Calendar year 2007. The interest rate upon all unpaid taxes which are due as of January 1, 2007, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2007. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2007. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2007.

## ARC 5527B

### REVENUE DEPARTMENT[701]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 42, “Adjustments to Computed Tax,” Chapter 43, “Assessments and Refunds,” Chapter 46, “Withholding,” Chapter 48, “Composite Returns,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and In-

terest, and Allocation of Tax Revenues,” Iowa Administrative Code.

These amendments are proposed as a result of 2006 Iowa Acts, House Files 2708, 2731, 2782, 2791, 2792 and 2794, and 2006 Iowa Acts, Senate Files 2056 and 2217.

Item 1 amends subrule 39.1(7) to update the list of refundable individual income tax credits.

Item 2 amends subrule 39.2(4) to update the cross references to Iowa Code sections relating to tax credits.

Items 3, 4, 5 and 6 amend subrules 39.4(7), 39.5(10), 39.5(11) and 39.6(3) to strike references to “unmarried heads of household” to match the definition of “head of household” for federal tax purposes.

Item 7 amends rule 701—40.3(422) to update the list of bonds issued by the state and its political subdivisions for which interest is exempt for both federal and Iowa income tax purposes.

Item 8 amends subrules 40.38(8) and 40.38(13) to strike references to “employed in a business” for purposes of qualifications for the Iowa capital gain deduction, and Item 9 amends the implementation clause for rule 701—40.38(422).

Items 10, 11, 12 and 13 amend rule 701—42.1(422) and subrules 42.2(6), 42.2(11) and 42.11(2) to update the cross references to Iowa Code sections relating to tax credits.

Item 14 amends rule 701—42.12(422) to provide that the tax credit in Iowa Code section 422.12B must be subtracted before calculating the franchise tax credit. Item 14 also amends the implementation clause for this rule.

Item 15 amends subrule 42.13(2) and the implementation clause for rule 701—42.13(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for individual income tax is transferred effective July 1, 2006.

Item 16 amends subrule 42.14(2) to correct a cross reference to an Iowa Code section.

Item 17 amends subrule 42.15(6) and the implementation clause for rule 701—42.15(422) to provide that the Department of Revenue will issue the replacement tax credit certificate when the historic preservation and cultural and entertainment district tax credit for individual income tax is transferred effective July 1, 2006.

Item 18 amends rule 701—42.20(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for individual income tax.

Items 19 and 20 amend subrules 43.4(6) and 43.4(7) to update the applicable dates for the keep Iowa beautiful fund checkoff and the volunteer firefighter preparedness fund checkoff.

Item 21 adopts new subrules 43.4(8) and 43.4(9) and updates the implementation clause for rule 701—43.4(68A, 422,456A) to provide for the new individual income tax checkoffs for the veterans trust fund and the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund.

Item 22 amends subrule 46.3(2) to update the new income thresholds for the child and dependent care tax credit.

Item 23 adopts new rule 701—46.10(403) to provide for the targeted jobs withholding tax credit.

Item 24 amends subrule 48.9(2) to update the cross references to Iowa Code sections relating to tax credits.

Item 25 amends subrule 52.15(2) and the implementation clause for rule 701—52.15(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for corporation income tax is transferred effective July 1, 2006. This is similar to the change in Item 15.



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Item 26 amends subrule 52.17(2) to correct a cross reference to an Iowa Code section.

Item 27 amends subrule 52.18(6) and the implementation clause for rule 701—52.18(422) to provide that the Department of Revenue will issue the replacement tax credit certificate when the historic preservation and cultural and entertainment district tax credit for corporation income tax is transferred effective July 1, 2006. This is similar to the change in Item 17.

Item 28 amends rule 701—52.23(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for corporation income tax. This is similar to the change in Item 18.

Item 29 amends subrule 58.8(2) and the implementation clause for rule 701—58.8(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for franchise tax is transferred effective July 1, 2006. This is similar to the change in Items 15 and 25.

Item 30 amends rule 701—58.13(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for franchise tax. This is similar to the change in Items 18 and 28.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 11, 2006, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 28, 2006. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 29, 2006.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2006 Iowa Acts, House Files 2791 and 2794; Iowa Code chapter 403 as amended by 2006 Iowa Acts, House File 2731; Iowa Code chapter 422 as amended by 2006 Iowa Acts, House Files 2708, 2782, 2792 and 2794, and 2006 Iowa Acts, Senate File 2217; and Iowa Code section 463C.12 as amended by 2006 Iowa Acts, Senate File 2056.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 39.1(7) as follows:

**39.1(7)** Returns filed for refund. A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimated tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the early childhood development tax credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—38.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, the investment tax credit for value-added agricultural products or biotechnology-related processes, the soy-based cutting tool oil tax credit, and the wage-benefit tax credit, *the soy-based transformer fluid tax credit, the E-85 gasoline promotion tax credit, and the biodiesel blended fuel tax credit.*

ITEM 2. Amend subrule **39.2(4)**, second unnumbered paragraph, as follows:

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return plus the tax payments made on or before the due date are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax, lump-sum tax, minimum tax, school district income surtax, and the emergency medical services income tax. The tax credits applicable are the credits set out in Iowa Code sections 422.5, 422.8, 422.10, 422.11 through 422.11L, 422.12, 422.12B, 422.12C chapter 422, division II, and section 422.111. The tax payments to be considered for purposes of determining if 90 percent of the tax was paid are the withholding tax payments, estimate payments, and the payments made with the Iowa income tax voucher form to ensure that 90 percent of the tax was paid timely.

ITEM 3. Amend subrule 39.4(7) as follows:

**39.4(7)** Head of household. The term "head of household" denotes a single individual and shall have the same meaning as defined in the Internal Revenue Code as defined in the Iowa Code. An individual who is claiming "surviving spouse" status for federal income tax purposes may not claim "head of household" on the Iowa individual income tax return.

ITEM 4. Amend subrule **39.5(10)**, paragraph "b," subparagraph (3), as follows:

(3) The person on whose return the dependent is claimed is filing as an ~~unmarried~~ a head of household or as a surviving spouse and has a net income of \$13,500 or less.

ITEM 5. Amend subrule **39.5(11)**, paragraph "a," subparagraph (3), as follows:

(3) The person on whose return the dependent is claimed is filing as an ~~unmarried~~ a head of household or as a surviving spouse and has a net income of \$13,500 or less.

ITEM 6. Amend subrule **39.6(3)**, paragraph "a," subparagraph (3), as follows:

(3) \*\*\*Exemption amounts are: \$17,500 for a married person filing a separate return or separately on the combined



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return form or for an estate or trust; \$26,000 for a single person or an ~~unmarried~~ a head of household or qualifying widow(er); \$35,000 for a married couple filing a joint return. However, the applicable exemption amounts will be reduced, but not below zero, by 25 percent of the amount by which the minimum taxable income of the taxpayer determined without the exemption amount exceeds the following amounts: \$75,000 for a married taxpayer filing separate returns or separately on the combined return or for an estate or a trust; \$112,500 for a single person, an ~~unmarried~~ a head of household, or a surviving spouse (qualifying widow(er)); \$150,000 for a married couple that files a joint state return.

ITEM 7. Amend rule **701—40.3(422)** as follows:

Add the following new numbered paragraphs “**24**” and “**25**”:

24. Honey Creek premier destination park bonds: Bonds issued under Iowa Code Supplement section 463C.12(8).

25. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under 2006 Iowa Acts, House File 2782, section 70.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 12.71, 261A.27, 357A.15, and 422.7; *Iowa Code Supplement section 463C.12 as amended by 2006 Iowa Acts, Senate File 2056, section 3; and Iowa Code Supplement section 422.7 as amended by 2006 Iowa Acts, House File 2782, section 71.*

ITEM 8. Amend subrule 40.38(8), introductory paragraph, and subrule 40.38(13) as follows:

**40.38(8)** Net capital gains from the sale of assets of a business by an individual that had owned the business ten years and had materially participated in ~~or had been employed in~~ the business for ten years. Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent the individual had owned the business for ten or more years and the individual had materially participated in ~~or had been employed in~~ the business for ten or more years. In addition to the ownership and material participation qualifications for the capital gain exclusion, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

**40.38(13)** Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes. Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had owned an interest in the target corporation and had materially participated in the corporation ~~or were employed in the corporation~~ for ten years prior to the date of the sale of the corporation. Note that the burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

ITEM 9. Amend the implementation clause for rule **701—40.38(422)** as follows:

This rule is intended to implement Iowa Code *Supplement* section 422.7 as amended by 1998 2006 Iowa Acts, ~~chapter 4177~~ House File 2794.

ITEM 10. Amend rule **701—42.1(257,422)**, first unnumbered paragraph, as follows:

The school district surtax is imposed on the income tax liabilities of all taxpayers residing in the school district on the

last day of the taxpayers' tax years. For purposes of the school district surtax, income tax liability is the tax computed under Iowa Code section 422.5, less the *nonrefundable* credits against computed tax which are authorized in Iowa Code sections 422.11A, 422.11B, 422.11C, 422.12, and 422.12B *chapter 422, division II*. ~~The credits that are applied against tax before the school district surtax is imposed are all the nonrefundable tax credits and those tax credits that are carried over if the credits exceed the computed tax.~~

ITEM 11. Amend subrule **42.2(6)**, last unnumbered paragraph, as follows:

Any research credit in excess of the individual's tax liability, less the *nonrefundable* credits authorized in Iowa Code sections 422.11A, 422.11C, 422.12 and 422.12B *chapter 422, division II*, may be refunded to the taxpayer or may be credited to the estimated tax of the taxpayer for the following year.

ITEM 12. Amend subrule **42.2(11)**, paragraph “c,” as follows:

c. An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity is to be based upon the pro-rata share of the individual's earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual's tax liability, less the *nonrefundable* credits authorized in Iowa Code sections 422.11A, 422.12 and 422.12B *chapter 422, division II*, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

ITEM 13. Amend subrule 42.11(2) as follows:

**42.11(2)** Imposing the medical emergency income surtax. The medical emergency income surtax will be imposed on the state income tax liability on each individual residing in the county at the end of the individual's tax year, whether the individual's tax year ends at the end of the calendar year or fiscal year. For purposes of the emergency medical income surtax, an individual's income tax liability is the aggregate of the state income taxes determined in Iowa Code section 422.5 less the *nonrefundable* credits against computed income tax which are authorized in Iowa Code sections 422.11A, 422.11B, 422.11C, 422.12, and 422.12B *chapter 422, division II*. ~~The credits that are applied against the state income tax before the emergency medical income surtax is imposed are all the nonrefundable income tax credits and those tax credits that are carried over to the following tax year if the credits exceed the tax liability.~~

ITEM 14. Amend rule **701—42.12(422)** as follows:

Amend the second unnumbered paragraph as follows:

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code ~~sections~~ 422.12 and 422.12B. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code ~~section~~ sections 422.12 and 422.12B.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.11 as amended by 2004 2006 Iowa Acts, House File 2484 2794.

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ITEM 15. Amend rule **701—42.13(15E)** as follows:

Amend subrule **42.13(2)**, first unnumbered paragraph, as follows:

Within 90 days of transfer of the tax credit certificate *for transfers prior to July 1, 2006*, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. *For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee *for transfers prior to July 1, 2006*, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. *For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee.* If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code *Supplement* section 15E.193B as amended by 2005 2006 Iowa Acts, House File 857 and House File 882, sections 53 through 55 2794.

ITEM 16. Amend subrule **42.14(2)**, definition of "disability," introductory paragraph, as follows:

"Disability" means the same as defined in Iowa Code section 225C.46 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

ITEM 17. Amend rule **701—42.15(422)** as follows:

Amend subrule **42.15(6)**, first unnumbered paragraph, as follows:

Within 90 days of transfer of the tax credit certificate *for transfers prior to July 1, 2006*, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. *For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee *for transfers prior to July 1, 2006*, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. *For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee.* If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or share-

holders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code *Supplement* chapter 404A as amended by 2005 2006 Iowa Acts, House File 868, ~~sections 20 through 26~~ 2794, and Iowa Code section 422.11D as amended by 2005 Iowa Acts, House File 882, section 64.

ITEM 18. Amend rule **701—42.20(15E)** as follows:

Amend the first unnumbered paragraph as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 *for the 2003-2007 calendar years.* *The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3).* *The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years.* ~~An endow Iowa tax credit shall not be authorized after December 31, 2008.~~ The endow Iowa tax credit cannot be transferred to any other taxpayer.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code *Supplement* section 15E.305 as amended by 2005 2006 Iowa Acts, House File 868, ~~sections 74 through 77~~ 2791.

ITEM 19. Amend subrule 43.4(6), introductory paragraph, as follows:

**43.4(6)** Keep Iowa beautiful fund checkoff. For tax years beginning on or after January 1, 2001, *but before January 1, 2006*, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend the designation.

ITEM 20. Amend subrule 43.4(7), introductory paragraph, as follows:

**43.4(7)** Volunteer firefighter preparedness fund checkoff. For tax years beginning on or after January 1, 2004, *but before January 1, 2006*, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the volunteer firefighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer firefighter preparedness fund, the amount credited to the volunteer firefighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer firefighter preparedness fund on an

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individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

ITEM 21. Amend rule **701—43.4(68A,422,456A)** as follows:

Add the following **new** subrules:

**43.4(8)** Veterans trust fund checkoff. For tax years beginning on or after January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the veterans trust fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount credited to the veterans trust fund will be reduced accordingly. Once the taxpayer has designated a contribution to the veterans trust fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the veterans trust fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the veterans trust fund are due, the department of revenue shall transfer the total amount designated to the veterans trust fund.

**43.4(9)** Joint keep Iowa beautiful fund and volunteer firefighter preparedness fund checkoff. For tax years beginning on or after January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund, the amount credited to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the veterans trust fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the keep Iowa beautiful fund, and the remaining one-half will be transferred to the volunteer firefighter preparedness fund.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement sections 422.12A as amended by 2004 Iowa Acts, Senate File 2412 and 2298, 422.12D and 422.12E, and sections 422.12G and 422.12H as amended by 2004 2006 Iowa Acts, Senate File 2298 House Files 2708, 2792 and 2794; and 2004 Iowa Acts, Senate File 2298, section 438.

ITEM 22. Amend subrule **46.3(2)**, paragraph “b,” subparagraph (4), as follows:

(4) Allowances for the child/dependent care credit. Employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. Taxpayers that expect to have a net income of \$40,000 \$45,000 or more for the a tax year beginning on or after January 1, 2006, should not claim withholding allowances for the child and dependent care credit, since they these taxpayers are not eligible for the credit.

ITEM 23. Amend 701—Chapter 46 by adding the following **new** rule:

**701—46.10(403) Targeted jobs withholding tax credit.** For employers that created targeted jobs in an urban renewal area and that enter into a withholding agreement with pilot project cities approved by the Iowa department of economic development, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the Iowa department of economic development may be found in 261—Chapter 71.

If the amount of withholding by the employer is less than 3 percent of the wages paid to the employees covered under the withholding agreement, the employer can take the remaining credit against Iowa tax withheld for other employees or may carry the credit forward for up to ten years or until depleted, whichever is the earlier.

If an employer also has a new job credit from withholding provided in rule 701—46.8(260E) or the supplemental new jobs credit from withholding provided in subrule 46.9(1), these credits shall be collected and disbursed prior to the collection and disbursement of the targeted jobs withholding tax credit.

**46.10(1)** Notification by the employer. Once a withholding agreement is entered into with a pilot project city, the employer shall notify the department of revenue that an agreement has been executed. With this notification, the employer must also provide its address, tax identification number and the number of new jobs created under the agreement. In addition, for each year that the withholding agreement is in place, the employer must notify the department of revenue by January 31 of the number of new jobs created as of December 31 of the preceding year.

**46.10(2)** Notification by the pilot project city. The pilot project city must notify the department of revenue on a quarterly basis of the amount of the targeted jobs withholding credit that each employer covered by a withholding agreement remitted to the city. This notification must occur within 45 days after the end of each calendar quarter. In addition,

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the pilot project city must notify the department of revenue immediately when a withholding agreement with an employer is terminated.

This rule is intended to implement 2006 Iowa Acts, House File 2731.

ITEM 24. Amend subrule **48.9(2)**, first unnumbered paragraph, as follows:

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return, plus the tax payments made on or before the due date, are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax and minimum tax. The tax credits applicable are the credits set out in Iowa Code sections ~~422.10, 422.11A, 422.11B, 422.11C, 422.42, chapter 422, division II, and section 422.111.~~

ITEM 25. Amend rule **701—52.15(15E)** as follows:

Amend subrule **52.15(2)**, first unnumbered paragraph, as follows:

Within 90 days of transfer of the tax credit certificate *for transfers prior to July 1, 2006*, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. *For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee *for transfers prior to July 1, 2006*, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. *For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee.* If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement section 15E.193B as amended by 2005 2006 Iowa Acts, House File 857 and House File 882, sections 53 through 55 2794.

ITEM 26. Amend subrule **52.17(2)**, definition of "disability," introductory paragraph, as follows:

"Disability" means the same as defined in Iowa Code section ~~225C.46 15.102~~. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

ITEM 27. Amend rule **701—52.18(422)** as follows:

Amend subrule **52.18(6)**, first unnumbered paragraph, as follows:

Within 90 days of transfer of the tax credit certificate *for transfers prior to July 1, 2006*, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. *For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee *for transfers prior to July 1, 2006*, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. *For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee.* If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement chapter 404A as amended by 2005 2006 Iowa Acts, House File 868, ~~sections 20 through 26~~ 2794, and Iowa Code section 422.11D as amended by 2005 Iowa Acts, House File 882, section 64.

ITEM 28. Amend rule **701—52.23(15E)** as follows:

Amend the first unnumbered paragraph as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 *for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. An endow Iowa tax credit shall not be authorized after December 31, 2008.* The endow Iowa tax credit cannot be transferred to any other taxpayer.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement section 15E.305 as amended by 2005 2006 Iowa Acts, House File 868, ~~sections 74 through 77, 2791, and section 422.33.~~

ITEM 29. Amend rule **701—58.8(15E)** as follows:

Amend subrule **58.8(2)**, first unnumbered paragraph, as follows:

Within 90 days of transfer of the tax credit certificate *for transfers prior to July 1, 2006*, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. *For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department*

## REVENUE DEPARTMENT[701](cont'd)

*of revenue.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee *for transfers prior to July 1, 2006*, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. *For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee.* If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 15E.193B as amended by 2005 2006 Iowa Acts, House File 857 and House File 882, sections 53 through 55 2794.

ITEM 30. Amend rule **701—58.13(15E)** as follows:

Amend the first unnumbered paragraph as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 *for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for 2008 and subsequent calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. An endow Iowa tax credit shall not be authorized after December 31, 2008.* The endow Iowa tax credit cannot be transferred to any other taxpayer.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement section 15E.305 as amended by 2005 2006 Iowa Acts, House File 868, sections 74 through 77, 2791, and section 422.60.

## ARC 5526B

### REVENUE DEPARTMENT[701]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59, 452A.76, 453A.25 and 453A.49, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 82, "Cigarette Tax," and Chapter 83, "Tobacco Tax," Iowa Administrative Code.

Item 1 amends rule 701—67.1(452A) by changing several definitions to correspond to Iowa Code chapter 452A.

Item 2 amends rule 701—67.1(452A) by adding new definitions added to Iowa Code chapter 452A.

Item 3 amends the implementation clause for rule 701—67.1(452A).

Item 4 amends rule 701—67.6(452A) by requiring nonterminal storage facilities with at least 100,000 gallons of product to file reports by electronic transmission.

Item 5 amends subrule 68.8(14) to state that no refund is allowable for fuel lost as a result of normal leakage or theft. Leakage resulting from a major accident or catastrophe is subject to refund.

Item 6 amends rule 701—68.15(452A) by requiring terminals and nonterminal storage facilities to provide additional information on reports filed with the Department. The rule is also amended by requiring these licensees to file reports with the Department by electronic transmission beginning September 1, 2006.

Item 7 amends subrule 82.5(2) to give the Department the authority to send cigarette stamps by registered mail rather than certified mail and to give the Department the option to send stamps either FedEx, USPS, or other comparable shipping service.

Item 8 amends subrule 82.10(2) to remove outdated language.

Item 9 amends rule 701—83.1(453A) by requiring a tobacco retailer to obtain a retail cigarette/tobacco permit.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 11, 2006, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 28, 2006. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 29, 2006.

Items 1, 2, and 3 of these amendments are intended to implement 2006 Iowa Acts, House File 2754. The other items clarify and update existing rules.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

## REVENUE DEPARTMENT[701](cont'd)

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **701—67.1(452A)**, definitions for “biofuel,” “blender,” “E-85 gasoline,” “ethanol blended gasoline,” “motor fuel,” and “nonterminal storage facility,” as follows:

“Biofuel” means ~~an oxygenated product derived from soybean oil, vegetable oil, or animal fats that can be used in diesel engines or aircraft. Biofuel may be a blend with diesel fuel or it may be 100 percent soybean oil, vegetable oil, or animal fats. Any biofuel product is a special fuel ethanol or biodiesel.~~

“Blender” means a person who owns and blends ~~alcohol~~ ethanol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The ~~blender~~ person is not restricted to blending ~~alcohol~~ ethanol with gasoline. Products blended with gasoline other than ~~grain alcohol~~ ethanol are taxed as gasoline. “Blender” also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

“E-85 gasoline” means ~~ethanol blended gasoline that contains at least 85 percent denatured alcohol by volume from the first day of April until the last day of October or 70 percent denatured alcohol from the first day of November until the last day of March formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2.~~

“Ethanol blended gasoline” means ~~motor fuel which has been blended with alcohol distilled from cereal grains, the end product containing at least 10 percent alcohol a formulation of gasoline which is a liquid petroleum product blended with ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2.~~ When motor fuel is used in these rules, it includes ethanol blended gasoline.

“Motor fuel” means ~~both of the following a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose and includes the following:~~

1. All products commonly or commercially known or sold as gasoline (including ethanol blended gasoline, casing-head, and absorption or natural gasoline) regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

“Motor fuel” does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph “2.” in which event the resulting product shall be deemed to be motor fuel. “Motor fuel” also does

not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

“Nonterminal storage facility” means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. “Nonterminal storage facility” includes a facility that manufactures products such as ~~alcohol~~ ethanol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

ITEM 2. Amend rule **701—67.1(452A)** by adding the following **new** definitions in alphabetical order:

“Biodiesel” means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, which meets the standards provided in Iowa Code section 214A.2.

“Biodiesel blended fuel” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component, provided in Iowa Code section 214A.2.

“Ethanol” means ethyl alcohol that is to be blended with gasoline if the ethanol meets the standards provided in Iowa Code section 214A.2.

“Gasoline” means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

“Non-ethanol blended gasoline” means gasoline other than ethanol blended gasoline.

ITEM 3. Amend rule **701—67.1(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.2 as amended by 2005 Iowa Acts, Senate File 413 House File 2754, and section 452A.3 as amended by 2005 Iowa Acts, House File 868.

ITEM 4. Amend rule 701—67.6(452A) as follows:

**701—67.6(452A) Timely filing of returns, reports, remittances, applications, or requests.** The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information is *are* not considered “filed” until such time as the taxpayer signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after July 1, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, terminals, ~~and blenders, and nonterminal storage facilities~~ with at least 100,000 gallons of

## REVENUE DEPARTMENT[701](cont'd)

product on their return *or report* must also file the schedules which support the return *or report* by electronic transmission.

All returns, reports, remittances, applications, or requests should be addressed *mailed* to: Iowa Department of Revenue, *Motor Fuel Unit*, Hoover State Office Building, Des Moines, Iowa 50319, unless electronic transmission is required.

In the event a dispute arises as to the time of filing, or a return, report, or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This rule applies only ~~where~~ *when* the document is not received or the postmark on the envelope is illegible, erroneous, or omitted.

This rule is intended to implement Iowa Code ~~section sections~~ 452A.8 as amended by 2005 Iowa Acts, Senate File 413, and section 452A.61.

ITEM 5. Amend subrule 68.8(14) as follows:

**68.8(14) Casualty loss.** In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, *earthquake, terrorist attack, leakage,* or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallonage lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation, *theft, normal leakage,* or unknown causes. *Leakage resulting from a major accident or catastrophe is subject to refund.*

ITEM 6. Amend rule 701—68.15(452A) as follows:

**701—68.15(452A) Terminal and nonterminal storage facility reports and records.** Each terminal and nonterminal storage facility operating ~~within this state in Iowa~~ must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name *and license number* of the company that owns and operates the terminal or nonterminal storage facility.
2. The location of the terminal or nonterminal storage facility.
3. The month and year covered by the report.
4. The terminal code as assigned by the Internal Revenue Service *or the storage facility license number assigned by the department.*
5. The beginning inventory.
6. The total receipts for the month ~~and the dates thereof~~ *including for each receipt: (a) the gross gallons received by schedule code, by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of receipt, (d) the seller, (e) the carrier, (f) the mode of transportation, and (g) the destination state.*
7. The total withdrawals for the month, including ~~as to~~ *for each withdrawal: (a) the gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, and (f) the mode of transportation, (g) the destination state, (h) the origin state, and (i) the carrier.*

8. The actual ending inventory *and any gains or losses.*

9. The signature *or electronic signature* of the person responsible for preparing the report.

10. *Such additional information as the department may require.*

For periods *beginning* on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission. *All licensees must file reports by electronic transmission beginning September 1, 2006.*

This rule is intended to implement Iowa Code section 452A.15(2) and 2002 Iowa Acts, House File 2622, section 25.

ITEM 7. Amend subrule **82.5(2)**, first unnumbered paragraph, as follows:

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by *certified registered mail or similar delivery service* at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

ITEM 8. Amend subrule **82.10(2)**, second unnumbered paragraph, as follows:

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone ~~or telegraph~~ and follow up with the affidavit acknowledgment at a later date.

ITEM 9. Amend rule 701—83.1(453A), introductory paragraph, as follows:

**701—83.1(453A) Licenses.** Before any person engages in the business of a distributor or subjobber of tobacco products, that person must obtain a tobacco distributor's or tobacco subjobber's license. If the person holds a valid cigarette permit of any kind, the license will be issued without cost if all other requirements for the license are met, but the license must still be obtained. ~~No license is required of a tobacco retailer. A tobacco retailer is required to obtain a retail cigarette/tobacco permit.~~



## ARC 5540B

### STATE PUBLIC DEFENDER[493]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 7, “Definitions,” Chapter 12, “Claims for Indigent Defense Services,” and Chapter 13, “Claims for Other Professional Services,” Iowa Administrative Code.

These proposed amendments implement 2006 Iowa Acts, House File 2789, which revised the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, Senate File 2304, which modified the process for review and payment of non-attorney fee claims in juvenile cases, and the amendments modify other claims procedures to streamline the submission, review and payment process.

Interested persons may make written comments or suggestions on the proposed amendments on or before November 30, 2006. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087, faxed to (515)281-7289, or E-mailed to [msmith@spd.state.ia.us](mailto:msmith@spd.state.ia.us).

There will be a public hearing on November 30, 2006, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should advise the State Public Defender of specific needs.

These amendments are intended to implement Iowa Code chapters 13B, 232, and 815.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **493—7.1(13B,815)** as follows:

Adopt the following **new** definition in alphabetical order:

“Claims for other professional services” means claims submitted by nonattorneys, including but not limited to investigators, foreign language interpreters, experts, certified shorthand reporters, and persons conducting medical or psychological evaluations.

Amend the following definitions:

“Clerical activities” means activities including, but not limited to, opening files; closing files; making photocopies; mailing; opening mail; ~~sending mail~~; *sending cover letters*; *transmitting copies of documents to a client, other party or clerk of court*; sending a fax; picking up or delivering documents, *internal file memos or instructions to staff*; scheduling; or billing.

“Date of service” means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date warrant was issued for the client, or the date of the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or a warrant being issued. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims *or claims for other professional services*, “date of service” means the last date on the itemization. For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date of the attorney’s withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, “date of service” means the date on which *the procedendo issues* or the case is ~~disposed of or~~ dismissed. For contract ~~attorneys~~ *appellate claims*, “date of service” means the date of filing of the page-proof brief or final brief. For claims filed as a result of a notice of action letter, “date of service” means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, “date of service” means the date of the order.

“Travel time,” which is payable from the indigent defense fund, means reasonable and necessary time spent by the attorney for travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed to a different county for the convenience of the court;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a ~~criminal~~ *criminal* case if the place of detention is other than the county seat of the county in which the ~~crime occurred~~ *action is pending*;
5. To and from the location of the placement of a child in a juvenile case if the ~~attorney~~ *guardian ad litem* is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case if *the guardian ad litem* is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
7. To and from a court of appeals or supreme court argument *not held in Des Moines*;
8. To and from the location where the deposition of an expert witness is being taken; or
9. Other travel for which authorization is obtained from the state public defender.

ITEM 2. Amend rule 493—12.1(13B,815) by adding the following **new** subrule:

**12.1(3)** The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense), and consistent with good stewardship of public appropriations.



## STATE PUBLIC DEFENDER[493](cont'd)

ITEM 3. Amend subrule **12.2(1)**, paragraph “a,” as follows:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or *applications for interlocutory appeals* to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and *applications for interlocutory appeals*, must be submitted on a Juvenile form. Appellate fee claims, *including claims for work performed after the granting of an application for discretionary review or for interlocutory appeal, or if full briefing is ordered following a petition on appeal*, must be submitted on an Appellate form. The claim forms may be obtained from the clerk of district court or downloaded from the state public defender Web site: [www.spd.state.ia.us](http://www.spd.state.ia.us). Claims submitted using forms downloaded from the Web site that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.

ITEM 4. Amend subrule **12.2(1)**, paragraph “e,” by adding the following new subparagraph (5):

(5) If the itemization does not indicate the date of the disposition of the case, a copy of the dispositional order must be attached to the claim.

ITEM 5. Amend subrule 12.2(6) as follows:

**12.2(6)** For cases to which the attorney is appointed after June 30, 2004, claims that are not timely will be denied. Time billed on claims which are denied, or which could have been denied, pursuant to this subrule may be included in subsequent claims if timely submitted with regard to a subsequent date of service in the same case. *For purposes of this subrule, a probation, parole, or contempt proceeding shall not be deemed the “same case” as the underlying proceeding.*

ITEM 6. Amend subrule 12.2(8) as follows:

**12.2(8)** Claims for clerical activities, overhead, preparation of the fee claim and or itemization of services; *for obtaining, preparing, or reviewing an application or order to exceed the fee limitations; or for preparation of a motion to review and or order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney’s appointment and will be denied.*

ITEM 7. Amend subrule 12.3(3) as follows:

**12.3(3)** Specific cases. Interim claims in Class A or B felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney’s appointment.

ITEM 8. Amend subrule 12.3(4) as follows:

**12.3(4)** Change of employment. If an attorney is changing law firms, the attorney may submit an interim claim to end billing at one firm and start billing at the new firm. *Both If payments are to be made to someone other than the law firm which the attorney is leaving, both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and what where the payments up to a specific date should be made to the law firm.*

ITEM 9. Amend rule 493—12.5(13B,815) as follows:

**493—12.5(13B,815) Appellate contracts.** Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid \$1,500 \$1,750 for each appellate case to which the attorney is appointed. ~~One thousand dollars~~ *Following submission of the attorney’s proof brief, \$1,200 is payable following submission of the attorney’s proof brief; the remainder, shall be paid after the final brief is filed.*

ITEM 10. Amend subrule 12.5(2) as follows:

**12.5(2)** Juvenile cases/joinder. ~~In a juvenile appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case. In a juvenile appellate case to which the attorney was appointed after June 30, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$550 in the case. For juvenile appeals, only delinquency appeals are covered by an appellate contract. All other juvenile appeals are subject to subrule 12.6(3).~~

ITEM 11. Amend subrule 12.5(3) as follows:

**12.5(3)** Juvenile petition on appeal. ~~In a juvenile case in which a petition on appeal is filed, the petition is not considered an appeal for purposes of this rule. The trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the trial court shall appoint an attorney pursuant to the Iowa Code. An attorney fee claim for services subsequent to such order must be submitted on an Appellate form. Applications for further review. In a case in which an application for further review is filed, the contract amount will be increased by the reasonable amount of time necessary for the further review, payable at \$55 per hour.~~

ITEM 12. Amend subrule 12.5(4) as follows:

**12.5(4)** Unusually complicated cases. In an appeal that is unusually complicated, the attorney may negotiate with the state public defender *may approve for a fee in excess of the fees contract amount contained in rule 12.5(13B,815).* However, this rule subrule does not require that the state public defender agree to pay a higher fee in any particular case. *A determination that a case is “unusually complicated” shall be made by the state public defender based on the information provided by the attorney at the time of submission of the claim showing The term “unusually complicated” as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. A case in which an application for further review is filed or a case in which oral argument is held at a location other than Des Moines is generally deemed to be “atypical” as that term is used in this rule. An attorney whose claim is partially denied pursuant to this subrule may seek review of the state public defender’s action.*

## STATE PUBLIC DEFENDER[493](cont'd)

ITEM 13. Amend subrule 12.6(1) as follows:

**12.6(1)** Adult cases. The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$15,000 \$18,000
Class B felonies	\$3,500 \$3,600
Class C felonies	\$1,200
Class D felonies	\$1,000 \$1,200
Aggravated misdemeanors	\$1,000 \$1,200
Serious misdemeanors	\$500 \$600
Simple misdemeanors	\$250 \$300
Simple misdemeanor appeals to district court	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$250
Extradition	\$250

Postconviction relief—the greater of \$1,000 or one-half of the fee limitation for the conviction from which relief is sought.

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery *arising at four separate times*, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be ~~\$1,000~~ \$1,200 even if there were more than one separate occurrence. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

ITEM 14. Amend subrule 12.6(2) as follows:

**12.6(2)** Juvenile cases. The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,000 \$1,100
Child in need of assistance (CINA)	
(through disposition)	\$1,000 \$1,100
Termination of parental rights (TPR)	
(through disposition)	\$1,500 \$1,650
Juvenile court review and other	
postdispositional court hearings	\$300
Judicial bypass hearings	\$150
Juvenile commitment hearings	\$150
Juvenile petition on appeal	
(CINA or TPR)	\$500 \$550
Motion for further review after	
petition on appeal	\$250 \$275

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code. The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is ~~\$1,000~~ \$1,100 for all four proceedings, not ~~\$1,000~~ \$1,100 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to ~~\$1,000~~ \$1,100 for the child in need of assistance case and up to ~~\$1,500~~ \$1,650 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the *appointed* trial attorney does not need to obtain ~~an a new~~ appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 15. Amend subrule 12.6(3) as follows:

**12.6(3)** Appellate cases. Except as provided in this subrule, the state public defender establishes a fee limitation of ~~\$2,000~~ \$2,200 for combined attorney time and paralegal time for all activities in appellate cases filed with the Iowa supreme court.

ITEM 16. Amend subrule **12.6(3)** by adding the following *new* paragraph "**c**":

c. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing and the trial court appoints the trial attorney to pursue the full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether subsequent appellate claims exceed the fee limitations.

ITEM 17. Amend subrule 13.2(6) as follows:

**13.2(6)** Submission of claims. Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. Other claims for professional services must be submitted, *on a form promulgated by the state public defender*, to the state public defender at the following address: State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 18. Amend subrule 13.2(7) as follows:

**13.2(7)** Claims from state employees. Claims submitted by state of Iowa employees must be submitted on *a form promulgated by the state public defender and on a state travel voucher form*.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 19. Rescind subrule **13.2(8)**.

ITEM 20. Rescind rule **493—13.6(815)**.

## ARC 5509B

### TRANSPORTATION DEPARTMENT[761]

#### Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

The purpose of this amendment is to allow the full 12 months of use of the \$300 annual oversize/overweight permit when the original permitted vehicle is unable to operate the entire duration because it has been damaged in an accident, junked or sold. Currently, the motor carrier has to purchase a new permit for the replacement vehicle.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than November 28, 2006.

A meeting to hear requested oral presentations is scheduled for Thursday, November 30, 2006, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa. The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendment may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by December 11, 2006.

This amendment is intended to implement Iowa Code chapter 321E.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Amend subrule 511.5(2) as follows:

**511.5(2)** Annual oversize/overweight permit. A fee of \$300 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. *Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.*

## ARC 5523B

### TRANSPORTATION DEPARTMENT[761]

#### Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2006 Iowa Acts, House File 2782, section 55, the Department of Transportation hereby gives Notice of Intended Action to adopt Chapter 924, "Public Transit Infrastructure Grant Program," Iowa Administrative Code.

The purpose of this rule making is to adopt a new chapter concerning the Public Transit Infrastructure Grant Fund that was created by 2006 Iowa Acts, House File 2782, section 55. The Public Transit Infrastructure Grant Program will provide funding for improvement of the vertical infrastructure of Iowa's designated public transit systems.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than November 28, 2006.

A meeting to hear requested oral presentations is scheduled for Friday, December 1, 2006, at 10 a.m. in the Modal Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed rules may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by December 11, 2006.

These rules are intended to implement Iowa Code sections 8.57, 324A.1 and 2006 Iowa Acts, House File 2782, section 55.

## TRANSPORTATION DEPARTMENT[761](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Adopt the following **new** chapter:

CHAPTER 924  
PUBLIC TRANSIT INFRASTRUCTURE  
GRANT PROGRAM

**761—924.1(324A) Purpose.** The purpose of the public transit infrastructure grant program is to provide funding for improvement of the vertical infrastructure of Iowa's designated public transit systems.

**761—924.2(324A) Definitions.** The following definitions shall apply to this chapter:

"Public transit system" means one of the regional transit systems or urban transit systems designated under Iowa Code section 324A.1.

"Vertical infrastructure" is defined in Iowa Code section 8.57, subsection 6.

**761—924.3(324A) Information and forms.** Information, instructions, and application forms may be obtained from the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1875. Information and forms are also available through the Internet at <http://www.iatransit.com>.

**761—924.4** Reserved.

**761—924.5(324A) Applicant eligibility.** Eligible public transit systems shall be limited to the regional transit systems and urban transit systems that have been designated under Iowa Code chapter 324A.

**761—924.6(324A) Project eligibility.** Projects may be considered for funding only if:

**924.6(1)** The project has been included in a locally approved transportation improvement program and in the state-wide transportation improvement program.

**924.6(2)** Local match for the project is currently available.

**924.6(3)** The project is capable of being substantially completed within 18 months of project selection.

**761—924.7(324A) Eligible project activities.** Activities that are eligible for reimbursement include, but are not limited to, the following:

**924.7(1)** Construction, expansion, or renovation of facilities for administration of public transit operations, including any associated design, land acquisition, grading and foundation work.

**924.7(2)** Construction, expansion, or renovation of facilities for servicing, maintenance or storage of public transit vehicles, including any associated design, land acquisition, grading and foundation work.

**924.7(3)** Construction, expansion, or renovation of transit vehicle fueling facilities, including any associated design, land acquisition, grading and foundation work.

**924.7(4)** Construction, expansion, or renovation of passenger waiting facilities, including any associated design, land acquisition, grading and foundation work.

**924.7(5)** Relocation of an existing administrative or maintenance facility, if necessary to correct violations of

safety or design standards. Such project may include any associated design, land acquisition, grading and foundation work.

**761—924.8(324A) Ineligible project activities.** A transit facility may be incorporated into a larger project. Examples might include, but are not limited to, an intermodal facility, a headquarters for the umbrella organization sponsoring the transit program, or a public works facility. If this is the case, those costs attributable to the nontransit elements of the larger project shall not be eligible under this program.

**761—924.9** Reserved.

**761—924.10(324A) Funding.**

**924.10(1)** Program funds may reimburse up to 80 percent of transit-related project costs.

**924.10(2)** At least 20 percent of transit-related project costs must be provided from local sources by the sponsoring transit system in cash or value of real property.

**924.10(3)** Assistance from the public transit infrastructure grant program, when combined with federal or other state resources, may not exceed 80 percent of the project's transit-related costs.

**761—924.11(324A) Project applications.**

**924.11(1)** Project applications shall be submitted to the office of public transit.

**924.11(2)** Each application shall contain:

a. General information, including the transit system name, contact person, mailing address, E-mail address, telephone number, and fax number.

b. A project data sheet. The data sheet shall include the following:

(1) A brief description of the project and its purpose, project justification and anticipated benefits to the transit program.

(2) Cost information including total project cost and an itemized breakdown of project components (including transit vs. nontransit costs).

(3) The proposed implementation schedule.

(4) A statement of the applicant's ability to complete the project.

(5) A sketch of the project.

c. Documentation of project feasibility and costs.

d. A resolution from the governing body of the sponsoring transit system endorsing the project and authorizing the necessary local funding match.

**761—924.12** Reserved.

**761—924.13** Reserved.

**761—924.14(324A) Project priorities.** The transportation commission shall consider the following in project selection:

**924.14(1)** Benefits of project to the transit program in terms of:

a. Enhancement of the life of the transit vehicle fleet.

b. Enhancement to transit services.

c. Increased ridership.

**924.14(2)** Readiness to proceed.

**924.14(3)** Feasibility of timely completion of the proposed project.

**924.14(4)** Ability of the project to leverage other funds.

**761—924.15(324A) Review and approval.** Department staff shall review project applications with an industry advisory committee and shall submit recommendations to the

## TRANSPORTATION DEPARTMENT[761](cont'd)

transportation commission. The transportation commission is responsible for approving the projects to be funded.

**761—924.16(324A) Project agreement and administration.**

**924.16(1) Agreement.** After a project has been approved, the department shall enter into an agreement with the transit system sponsoring the project.

**924.16(2) Payments.** Payments to the transit system sponsor for eligible project costs shall be made on a cost reimbursement basis.

These rules are intended to implement Iowa Code sections 8.57 and 324A.1 and 2006 Iowa Acts, House File 2782, section 55.

**ARC 5525B****UTILITIES DIVISION[199]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 476.2, and 476.8, the Utilities Board (Board) gives notice that on October 19, 2006, the Board issued an order in Docket No. RMU-06-9, In re: Natural Gas and Electric Utility Customer Notice for Information and Complaints [199 IAC 19.4(1) and 20.4(2)], “Order Commencing Rule Making.” The proposed amendments update Board contact information and require rate-regulated utilities with more than 50,000 customers to include the contact information on monthly bills. The order containing the background and support for this rule making can be found on the Board’s Web site, [www.state.ia.us/iub](http://www.state.ia.us/iub).

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 28, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 476.2, and 476.8.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **19.4(1)“i”** as follows:

i. ~~Inquiries Promptly and courteously resolve inquiries for information or complaints to a utility shall be resolved promptly and courteously.~~ Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer ~~which~~ *that* will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall include the following statement: “If (utility name) does not resolve your complaint, you may request assistance from the ~~Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, Iowa Utilities Board by calling (515)281-3839 or toll-free (877)565-4450, or by writing to 350 Maple Street, Des Moines, Iowa 50319, or by E-mail to [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).~~”

The bill insert or notice for municipal utilities shall include the following statement: “If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the ~~Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, Iowa Utilities Board by calling (515)281-3839, or toll-free (877)565-4450, by writing to 350 Maple Street, Des Moines, Iowa 50319, or by E-mail to [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).~~”

The bill insert or notice on the bill ~~will~~ *shall* be provided ~~monthly by utilities serving more than 50,000 Iowa retail customers and no less than annually by all other natural gas utilities.~~ Any utility which does not use the standard form ~~contained herein~~ *statement described in this paragraph* shall file its proposed ~~form~~ *statement* in its tariff for approval. A utility, ~~which~~ *that* bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set out above.

ITEM 2. Amend subrule 20.4(2) as follows:

**20.4(2)** Customer contact employee qualifications. ~~Each utility shall promptly and courteously resolve inquiries Inquiries for information or complaints to a utility shall be resolved promptly and courteously.~~ Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer ~~which~~ *that* will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall include the following statement: “If (utility name) does not resolve your complaint, you may request assistance from the ~~Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, Iowa Utilities Board by calling (515)281-3839 or toll-free (877)565-4450, or by writing to 350 Maple Street, Des Moines, Iowa 50319, or by E-mail to [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).~~”

## UTILITIES DIVISION[199](cont'd)

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the ~~Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319,~~ *Iowa Utilities Board by calling (515)281-3839, or toll-free (877)565-4450, by writing to 350 Maple Street, Des Moines, Iowa 50319, or by E-mail to [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).*"

The bill insert or notice for non-rate-regulated rural electric cooperatives shall include the following statement: "If your complaint is related to the (utility name) service rather than its rates, and (utility name) does not resolve your complaint, you may request assistance from the ~~Utilities Division, Department of Commerce, 350 Maple Street, Des~~

~~Moines, Iowa 50319,~~ *Iowa Utilities Board by calling (515)281-3839, or toll-free (877)565-4450, by writing to 350 Maple Street, Des Moines, Iowa 50319, or by E-mail to [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).*"

The bill insert or notice on the bill ~~will~~ *shall* be provided *monthly by utilities serving more than 50,000 Iowa retail customers and no less than annually by all other electric utilities.* Any utility which does not use the standard ~~form contained herein~~ *statement described in this subrule* shall file its proposed ~~form~~ *statement* in its tariff for approval. A utility ~~which~~ *that* bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set out above.

## ARC 5514B

HUMAN SERVICES  
DEPARTMENT[441]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2006 Iowa Acts, House File 2734, section 10, subsection 11, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments add remedial services as a covered service under Medicaid and define the amount, duration, and scope of remedial services. Remedial services are defined as services designed to minimize or eliminate the symptoms or causes of a psychological disorder. This service category will include services that are currently furnished by providers of rehabilitation services for adults with chronic mental illness (ARO) and services currently furnished by providers of rehabilitative treatment services (RTS) in the child welfare system.

The way in which remedial services will be provided under Medicaid is being changed to reflect a medical model of rehabilitation. The Department has redefined the scope of services to closely match the definition of these services under federal Medicaid regulations. After discussions with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, the Department has determined that these changes are necessary to ensure continued access to remedial services for both the child and adult populations.

Under these amendments, the service categories of ARO and RTS are deleted from the Medicaid program. Current ARO providers will not need to reenroll in order to provide remedial services. However, there will be new billing codes and a new quality oversight process that will involve reviews of the services provided both by clinicians and service providers. All RTS providers will need to enroll as remedial services providers.

Under the new model of services, remedial services providers will implement the treatment plans developed by licensed practitioners of the healing arts, who will:

- Assess the needs of all Medicaid members seeking remedial services and complete a treatment plan;
- Have an ongoing practitioner/client relationship with the Medicaid member; and
- Be responsible for ongoing reassessment and review of the treatment plan.

Remedial services providers will be reimbursed on a retrospective cost-related basis with rates capped at 110 percent of the average cost. All providers will be required to submit cost reports for rate determination. There may be higher rates for current RTS providers that will now be reimbursed on a cost-related basis. Some current ARO providers may have lower rates as a result of the rate cap of 110 percent of the average cost.

In 2006 Iowa Acts, House File 2734, section 10, subsection 11, the General Assembly directed the Department to submit a state plan amendment to CMS to implement these changes. The Department has been keeping affected providers informed of its progress in implementing these changes

through correspondence and on its Web site ([www.dhs.state.ia.us](http://www.dhs.state.ia.us)).

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5368B**. The Department held a public hearing on the Notice of Intended Action, which was attended by 24 people. The Department received comments on the Notice of Intended Action from 57 people. Because of these comments, the Department has made the following revisions to the Notice of Intended Action:

- Except for foster group care, coverage of ARO and RTS services is not being removed immediately, to allow for potential delays in members' transition to the new service. Therefore, rules 441—77.38(249A), 441—77.42(249A), 441—78.42(249A), and 441—78.48(249A) and corresponding reimbursement provisions in 441—79.1(249A) are not being rescinded at this time. Consequently, the new rules for remedial services provider qualifications and coverage limitations have been renumbered as 441—77.12(249A) and 441—78.12(249A), respectively, and the subrule for reimbursement of remedial services has been renumbered as 79.1(23).

- A provision is added to rule 441—77.12(249A) to reflect that certification as a provider of rehabilitative treatment services allows a provider to meet the conditions for participation as a provider of remedial services.

- New subrule 78.12(1) is added to define covered remedial services. Community psychiatric supportive treatment, crisis intervention, and health or behavioral interventions are covered services for members aged 20 or under. Rehabilitation program and skills training and development are covered services for members aged 18 or over.

- New subrule 78.12(2) is added to define and exclude habilitative services from coverage as remedial services. The other subrules have been renumbered accordingly.

- Language is added to renumbered subrule 78.12(3) to illustrate the range of practitioners who may qualify to perform the functions of a licensed practitioner of the healing arts under rule 441—78.12(249A) and to cross-reference rules for the Iowa Plan. Licensed practitioners of the healing arts may include physicians (M.D. or D.O.), advanced registered nurse practitioners (ARNP), psychologists (Ph.D. or Psy.D.), independent social workers (LISW), marital and family therapists (LMFT), and mental health counselors (LMHC).

- Language in renumbered subrule 78.12(4) is changed to extend the maximum duration of a remedial services implementation plan from three months to six months, to provide that the plan must require submission of progress notes at least every six weeks to the IME Medical Services Unit (rather than weekly to the licensed practitioner of the healing arts), and to add provisions for quality review by the IME Medical Services Unit.

- Limits on authorization for ARO and RTS services have been added to rules 441—78.42(249A) and 441—78.48(249A) to reflect that authorizations will not be issued for those services after December 31, 2006, and that all authorizations must end no later than June 30, 2007.

- Language in renumbered subrule 79.1(23) is changed to clarify that both the interim and final reimbursement rates are subject to the Department's limit on reasonable costs, set at 110 percent of the average rate reported for similar ser-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

vices and to change the number of the cost report. The Department is aware of the value of using the same cost report across programs and will work to develop a shared cost report for remedial and home- and community-based waiver services providers.

The Council on Human Services adopted these amendments on October 11, 2006.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, House File 2734, section 10, subsection 11.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2006 Iowa Acts, House File 2734, section 10, subsection 11.

These amendments became effective on November 1, 2006.

The following amendments are adopted.

ITEM 1. Adopt **new** rule 441—77.12(249A) as follows:

**441—77.12(249A) Remedial services providers.** A provider of remedial services is eligible to participate in the medical assistance program when:

1. The provider is accredited by the mental health, mental retardation, developmental disabilities, and brain injury commission pursuant to 441—Chapter 24; or

2. The provider is certified by the department as a provider of rehabilitative treatment services pursuant to 441—185.10(234) as of August 31, 2006; or

3. The provider can demonstrate to the Iowa Medicaid enterprise that the provider has the skills and resources necessary to implement a member's treatment plan and remedial services implementation plan.

This rule is intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, House File 2734, section 10, subsection 11.

ITEM 2. Adopt **new** rule 441—78.12(249A) as follows:

**441—78.12(249A) Remedial services.** Payment will be made for remedial services not otherwise covered under this chapter that are designed to minimize or, if possible, eliminate the symptoms or causes of a psychological disorder, subject to the limitations in this rule.

**78.12(1) Covered services.** Medicaid covers the following remedial services:

a. Community psychiatric supportive treatment, which offers intensive interventions to modify psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning when less intensive remedial services do not meet the member's needs.

(1) Interventions must focus on the member's remedial needs to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner.

(2) Interventions may assist the member in skills such as conflict resolution, problem solving, social skills, interpersonal relationship skills, and communication.

(3) Community psychiatric supportive treatment is covered only for Medicaid members who are aged 20 or under.

(4) Community psychiatric supportive treatment is not intended for members in congregate care.

(5) Community psychiatric supportive treatment is not intended to be provided in a group.

b. Crisis intervention to de-escalate situations in which a risk to self, others, or property exists.

(1) Services shall assist a member to regain self-control and reestablish effective management of behavioral symp-

toms associated with a psychological disorder in an age-appropriate manner.

(2) Crisis intervention is covered only for Medicaid members who are aged 20 or under and shall be provided as outlined in a written treatment plan.

c. Health or behavior intervention, used to modify the psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning.

(1) Interventions may address the following skills for effective functioning with family, peers, and community: conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and communication skills.

(2) The purpose of intervention shall be to minimize or eliminate psychological barriers to the member's ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner.

(3) Health or behavior intervention is covered only for Medicaid members aged 20 or under.

d. Rehabilitation program, which consists of interventions to enhance a member's independent living, social, and communication skills; to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and to maximize the member's ability to live and participate in the community.

(1) Interventions may address the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills.

(2) Rehabilitation program services are covered only for Medicaid members who are aged 18 or over.

e. Skills training and development, which consists of interventions to enhance independent living, social, and communication skills; to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and to maximize a member's ability to live and participate in the community.

(1) Interventions may include the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills.

(2) Skills training and development services are covered only for Medicaid members aged 18 or over.

**78.12(2) Excluded services.** Services that are habilitative in nature are not covered as remedial services. For purposes of this subrule, "habilitative services" means services that are designed to assist individuals in acquiring skills that they never had, as well as associated training to acquire self-help, socialization, and adaptive skills necessary to reside successfully in a home or community setting.

**78.12(3) Coverage requirements.** Medicaid covers remedial services only when the following conditions are met:

a. A licensed practitioner of the healing arts acting within the practitioner's scope of practice under state law has diagnosed the member with a psychological disorder. For example, licensed practitioners of the healing arts include physicians (M.D. or D.O.), advanced registered nurse practitioners (ARNP), psychologists (Ph.D. or Psy.D.), independent social workers (LISW), marital and family therapists (LMFT), and mental health counselors (LMHC). For purposes of this rule, the licensed practitioner of the healing arts must be:



## HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Enrolled in the Iowa Plan pursuant to 441—Chapter 88, Division IV; and

(2) Qualified to provide clinical assessment services under the Iowa Plan pursuant to 441—Chapter 88, Division IV (Current Procedural Terminology code 90801).

b. The licensed practitioner of the healing arts has recommended the remedial services as part of a plan of treatment designed to treat the member's psychological disorder. Diagnosis and treatment plan development provided in connection with this rule for members enrolled in the Iowa Plan are covered services under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

c. The remedial services provider has prepared a written remedial services implementation plan that has been approved by:

- (1) The member or the member's parent or guardian; and
- (2) The medical services unit of the Iowa Medicaid enterprise.

**78.12(4)** Approval of plan. The remedial services provider shall submit the treatment plan and the remedial services implementation plan to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing the services.

a. Initial plan. The IME medical services unit shall approve the provider's initial remedial services implementation plan if:

- (1) The plan conforms to the medical necessity requirements in subrule 78.12(3);
- (2) The plan is consistent with the written diagnosis and treatment recommendations made by the licensed practitioner of the healing arts;
- (3) The plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;
- (4) The provider can demonstrate that the provider possesses the skills and resources necessary to implement the plan, as required in rule 441—77.12(249A);
- (5) The plan does not exceed six months' duration; and
- (6) The plan requires that written progress notes be submitted no less often than every six weeks to the IME medical services unit.

b. Subsequent plans. The IME medical services unit may approve a subsequent remedial services implementation plan according to the conditions in paragraph "a" if the services are recommended by a licensed practitioner of the healing arts who has:

- (1) Reexamined the member;
- (2) Reviewed the original diagnosis and treatment plan; and
- (3) Evaluated the member's progress.

c. Quality review. The IME medical services unit will establish a quality review process. Reviews will evaluate:

- (1) The time elapsed from referral to remedial plan development;
- (2) The continuity of treatment;
- (3) The affiliation of the licensed practitioner of the healing arts with the remedial services provider;
- (4) Gaps in service;
- (5) The results achieved; and
- (6) Member satisfaction.

**78.12(5)** Medical necessity. Nothing in this rule shall be deemed to exempt coverage of remedial services from the requirement that services be medically necessary. "Medically necessary" means that the service is:

a. Consistent with the diagnosis and treatment of the member's condition;

b. Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member's caregiver;

c. The least costly type of service that can reasonably meet the medical needs of the member; and

d. In accordance with the standards of good medical practice. The standards of good practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of good practice identified by:

- (1) Knowledgeable Iowa clinicians practicing or teaching in the field; and
- (2) The professional literature regarding best practices in the field.

This rule is intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, House File 2734, section 10, subsection 11.

ITEM 3. Amend rule 441—78.42(249A), introductory paragraph, as follows:

**441—78.42(249A) Rehabilitative treatment services.** Payment will be made for rehabilitative treatment services as described in 441—Chapter 185, Divisions II to V, when the rehabilitative treatment services have been authorized by the review organization under the provisions set forth in rule 441—185.4(234) and the services are provided by providers certified as described in rules 441—185.10(234) and 441—185.11(234). *Authorization for rehabilitative treatment services shall not be made after December 31, 2006. Services authorized on or before December 31, 2006, may continue for the length of time specified in the authorization, with no renewals, but in no case may service continue after June 30, 2007.*

ITEM 4. Amend subrule 78.48(5) as follows:

**78.48(5)** Individual eligibility for rehabilitation services. In order for individuals to be eligible for rehabilitation services, the individuals must meet the definition of "adults with a chronic mental illness" and have a need for rehabilitation services. *Authorization for rehabilitative treatment services shall not be made after December 31, 2006. Services authorized on or before December 31, 2006, may continue for the length of time specified in the authorization, with no renewals, but in no case may service continue after June 30, 2007.*

ITEM 5. Amend rule **441—79.1(249A)** as follows:

Amend subrule **79.1(2)**, basis of reimbursement of specific provider categories table, by adopting the following **new** provider category in alphabetical order:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Remedial services provider	Retrospective cost-related. See 79.1(19)	110% of average cost.

Adopt the following **new** subrule:

**79.1(23)** Reimbursement for remedial services. Reimbursement for remedial services shall be made on the basis of a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation. The unit rate shall not exceed the established unit-of-service limit on reasonable costs pursuant to subparagraph 79.1(23)"c"(1). The unit of service may be a quarter-hour, a half-hour, an hour, a half-day, or a day, depending on the service provided.

a. Interim rate. Providers shall be reimbursed through a prospective interim rate equal to the previous year's retrospectively calculated unit-of-service rate. On an interim basis, pending determination of remedial services provider costs, the provider may bill for and shall be reimbursed at a

## HUMAN SERVICES DEPARTMENT[441](cont'd)

unit-of-service rate that the provider and the Iowa Medicaid enterprise may reasonably expect to produce total payments to the provider for the provider's fiscal year that are consistent with Medicaid's obligation to reimburse that provider's reasonable costs. The interim unit-of-service rate is subject to the established unit-of-service limit on reasonable costs pursuant to subparagraph 79.1(23)"c"(1).

b. Cost reports. Reasonable and proper costs of operation shall be determined based on cost reports submitted by the provider.

(1) Financial information shall be based on the provider's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Failure to maintain records to support the cost report may result in termination of the provider's Medicaid enrollment.

(2) The provider shall complete Form 470-4414, Financial and Statistical Report for Remedial Services, and submit it to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315, within three months of the end of the provider's fiscal year.

(3) A provider may obtain a 30-day extension for submitting the cost report by sending a letter to the IME provider cost audit and rate setting unit before the cost report due date. No extensions will be granted beyond 30 days.

(4) Providers of services under multiple programs shall submit a cost allocation schedule, prepared in accordance with the generally accepted accounting principles and requirements specified in OMB Circular A-87. Costs reported under remedial services shall not be reported as reimbursable costs under any other funding source. Costs incurred for other services shall not be reported as reimbursable costs under remedial services.

(5) If a provider fails to submit a cost report that meets the requirement of this paragraph, the department shall reduce payment to 76 percent of the current rate. The reduced rate shall be paid for not longer than three months, after which time no further payments will be made.

(6) A projected cost report shall be submitted when a new remedial services provider enters the program or an existing remedial services provider adds a new service code. A prospective interim rate shall be established using the projected cost report. The effective date of the rate shall be the day the provider becomes certified as a Medicaid provider or the day the new service is added.

c. Rate determination. Cost reports as filed shall be subject to review and audit by the Iowa Medicaid enterprise to determine the actual cost of services rendered to Medicaid members, using an accepted method of cost apportionment (as specified in OMB Circular A-87).

(1) A reasonable cost for a member is one that does not exceed 110 percent of the average allowable costs reported by Iowa Medicaid providers for providing similar remedial services to members who have similar diagnoses and live in similar settings.

(2) When the reasonable and proper costs of operation are determined, a retroactive adjustment shall be made. The retroactive adjustment represents the difference between the amount received by the provider through an interim rate during the year for covered services and the reasonable and proper costs of operation determined in accordance with this subrule.

ITEM 6. Amend subrule 88.65(6) as follows:

**88.65(6)** Excluded services. Unless *the service is specifically included in the contract*, the contractor shall not be re-

quired to provide long-term care (e.g., residential care facilities, nursing facilities, state hospital schools, or intermediate care facilities for persons with mental retardation), *remedial services*, or services provided as part of the Medicaid rehabilitative treatment services as set forth in 441—Chapter 185.

[Filed Emergency After Notice 10/12/06, effective 11/1/06]  
[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

**ARC 5515B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2006 Iowa Acts, House File 2734, section 10, subsection 11, the Department of Human Services amends Chapter 156, "Payments for Foster Care and Foster Parent Training," Chapter 182, "Family-Centered Services," Chapter 185, "Rehabilitative Treatment Services," and Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments change rules for child welfare services to accommodate Medicaid amendments that establish a new service category, remedial services, to take the place of rehabilitative treatment services. (See **ARC 5514B** herein.) Under the Medicaid amendments, the Department redefines the scope of covered services to match the definition of rehabilitative services in federal regulations. The way remedial services are provided under Medicaid will change to reflect a medical model of rehabilitation.

After discussions with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, the Department has determined that these changes are necessary to ensure continued access to remedial services. The General Assembly, in 2006 Iowa Acts, House File 2734, section 10, subsection 11, directed the Department to submit a state plan amendment to CMS to implement the changes from rehabilitative treatment services to remedial services.

Under these amendments:

- A new methodology is established for determining family foster care difficulty of care maintenance payments that is based on an assessment of the child's emotional, behavioral, and physical care needs. This method will apply to all placements made on or after January 1, 2007. Children in placement before January 1, 2007, will transition to the new payment structure as assessments are reviewed.
- Rates for foster family respite care will be set using the same criteria as those used for regular foster family care.
- Rehabilitative treatment services under Chapter 185 will no longer be provided in foster group care. Children in foster group care who need rehabilitative services will be eligible through the Medicaid program under the new remedial service category as soon as remedial services can be authorized and implemented. If remedial services cannot be authorized by October 31, 2006, the service area manager may issue a state payment for remedial services.
- An interim rate methodology is established for group care maintenance and child welfare services to reflect an estimate that group care providers will provide an average of one

## HUMAN SERVICES DEPARTMENT[441](cont'd)

hour per day of group remedial services and one hour per week of individual remedial services.

- Medicaid-eligible children who need in-home rehabilitative services will be served through the Medicaid program under the new remedial service category as soon as remedial services can be authorized and implemented. Medicaid-eligible children will continue to be eligible for rehabilitative treatment services based on an authorization from the Iowa Foundation for Medical Care in response to requests received on or before December 31, 2006, unless the children are receiving remedial services through the Medicaid program.

- The Department will continue through December 31, 2006, to issue authorizations for nonrehabilitative treatment services and authorizations for rehabilitative treatment services for children who are not Medicaid-eligible. No new authorizations or reauthorizations will be issued after December 31.

- After December 31, 2006, the Department will continue to issue authorizations for other family-centered services, including parental counseling and education, family team meeting facilitation, supervision, relative home study and home study update, community resource procurement, and flexible family support fund, and for family foster care supervision.

- The definitions of family-centered supervision and parental counseling and education components are revised to more clearly allow the Department to purchase supervision of sibling and parent-child visits, and to allow the Department to purchase a psychosocial evaluation relating to the child's safety, permanency, and well-being.

These amendments constitute an interim step in redesigning child welfare services to accommodate changes in Medicaid funding. The Department plans to propose rules later this year to address how child welfare services should be provided and authorized in an environment "delinked" from the Medicaid program.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on October 11, 2006.

The Department finds that notice and public participation are impracticable because the Medicaid amendments became effective November 1, 2006. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2006 Iowa Acts, House File 2734, section 10, subsection 11.

These amendments are also published herein under Notice of Intended Action as **ARC 5516B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6.

These amendments became effective November 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **441—156.1(234)** as follows:

Amend the definition of "group care maintenance" as follows:

"Group care maintenance" means food, clothing, shelter, school supplies, personal incidentals, daily care and, *general parenting, discipline, and supervision* of children to ensure their well-being and safety, and administration of maintenance items provided in a group care facility.

Adopt the following **new** definition of "child welfare service" in alphabetical order:

"Child welfare services" means age-appropriate activities to maintain a child's connection to the child's family and community, to promote reunification or other permanent placement, and to facilitate a child's transition to adulthood.

ITEM 2. Amend subrule **156.6(4)** as follows:

Amend paragraphs "**a**," "**d**," "**e**," and "**f**" as follows:

a. *When For placements made before January 1, 2007, when foster parents provide care to a special needs child, the foster family shall be paid the basic maintenance rate plus \$4.94 per day for extra expenses associated with the child's special needs. This rate shall continue until:*

(1) *The payment rate is reviewed under paragraph "f";*  
or

(2) *A higher rate is authorized under paragraph "h."*

d. *When For placements made before January 1, 2007, when a treatment foster family provides care to a child receiving behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), the foster family shall be paid the basic maintenance rate plus \$14.80 per day. This rate shall continue until:*

(1) *The payment rate is reviewed under paragraph "f";*  
or

(2) *A higher rate is authorized under paragraph "h."*

e. *When For placements made before January 1, 2007, when a service area manager determines that a foster family is providing care comparable to behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus \$14.80 per day. Foster families receiving this difficulty of care payment shall meet the requirements as found in 441—paragraph 185.10(8)"b." If the service area manager determines that a foster family has been providing this level of care prior to November 1, 1993, and the department has been paying the foster family difficulty of care payments in excess of \$14.80 per day, the foster family shall continue to receive the higher payment for the duration of the time the service area manager determines that the foster family is providing care comparable to that provided to a child receiving behavioral management services for children in therapeutic foster care. This rate shall continue until:*

(1) *The payment rate is reviewed under paragraph "f";*  
or

(2) *A higher rate is authorized under paragraph "h."*

*If the review organization determines that the child has been receiving family foster care core three services prior to November 1, 1993, and if the foster family has been receiving difficulty of care payments in excess of \$14.80 per day, the department shall continue to pay the foster family the higher payment for the duration of the time the review organization authorizes family foster care core three services.*

f. The difficulty of care maintenance payment shall be reviewed:

(1) *every Every six months or earlier if the child's situation ;*

(2) *When the child's placement changes;*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) When a significant change in the child's behavior is reported; and

(4) After termination of parental rights in preparation for negotiation of an adoption subsidy.

Adopt **new** paragraph "h" as follows:

h. Effective January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) based on the child's score on Form 470-4401, Foster Child Behavioral Assessment.

(1) Additional payments shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of \$5 per day.

2. Behavioral needs rated at level 2 qualify for a payment of \$10 per day.

3. Behavioral needs rated at level 3 qualify for a payment of \$15 per day.

(2) Use of Form 470-4401 to determine the difficulty of care maintenance payment:

1. Shall apply to all placements made on or after January 1, 2007.

2. Shall apply to all reviews under paragraph "f" made on or after January 1, 2007.

3. May apply to placements made before January 1, 2007, in lieu of the difficulty of care allowances in paragraphs "a," "d," and "e."

ITEM 3. Rescind and reserve subrule **156.7(3)**.

ITEM 4. Amend subrule 156.8(7) as follows:

Amend the introductory paragraph as follows:

**156.8(7)** Respite care. The service area manager may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be established as follows: *the rate authorized under rule 441—156.6(234) to meet the needs of the child.*

Rescind paragraphs "a," "b," and "c."

ITEM 5. Amend rule 441—156.9(234) as follows:

Amend subrule 156.9(1) as follows:

**156.9(1)** In-state reimbursement. ~~Public~~ *For the period from November 1, 2006, through June 30, 2007, public and private foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with the rate-setting methodology in rules 441—185.83(234) and 441—185.101(234) to 441—185.108(234) in this subrule.*

a. A provider of group care services shall maintain at least the minimum staff-to-child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441—Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.

b. Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

c. Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. The reimbursement rate shall be calculated as follows:

(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.

(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

(3) Step 3. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.

(4) Step 4. Add the amounts determined in Steps 2 and 3.

(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.

(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.

(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.

(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.

EXAMPLE: Provider A has the following rates as of October 31, 2006:

- A combined daily maintenance and service rate of \$121.45;

- A Medicaid rate for service code 96153 of \$5.10 per 15 minutes, or \$20.40 per hour;

- A Medicaid rate for service code 96152 of \$19.92 per 15 minutes, or \$79.68 per hour.

Step 1.  $\$121.45 \times 365 \text{ days} = \$44,329.25$

Step 2.  $\$20.40 \times 365 \text{ days} = \$7,446.00$

Step 3.  $\$79.68 \times 52 \text{ weeks} = \$4,143.36$

Step 4.  $\$7,446.00 + \$4,143.36 = \$11,589.36$

Step 5.  $\$44,329.25 - \$11,589.36 = \$32,739.89$

Step 6.  $\$32,739.89 \div 365 \text{ days} = \$89.70$

Step 7.  $\$89.70 \times 0.8562 = \$76.80 \text{ maintenance rate}$

Step 8.  $\$89.70 \times 0.1438 = \$12.90 \text{ child welfare service rate}$

Provider A's rates are \$76.80 for maintenance and \$12.90 for child welfare services.

d. If the Iowa Medicaid enterprise has not made a determination by October 31, 2006, on the need for remedial services for a child who is in group care placement as of that date, the department service area manager may approve a payment from state funds for the estimated daily reimbursement rate for remedial services that was used in the calculation of the provider's reimbursement rate under paragraph 156.9(1)"c." The service area manager shall document the reason for the delay in the decision on the child's need for remedial services.

(1) The service area manager may approve such payment only until the time that the Iowa Medicaid enterprise is anticipated to issue the decision regarding the child's need for remedial services. The service area manager shall not authorize payment from state funds if the Iowa Medicaid enterprise has determined that the child does not need remedial services.

(2) The payment that the service area manager may authorize shall be based on a reimbursement rate calculated as follows:

Step 1. Annualize the provider's reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

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*Step 2. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.*

*Step 3. Add the amounts determined in Steps 1 and 2.*

*Step 4. Determine the provider's estimated daily rate for reimbursement of remedial services by dividing the amount in Step 3 by 365 days.*

*EXAMPLE: Provider B has the following rates as of October 31, 2006:*

- *A Medicaid rate for service code 96153 of \$5.10 per 15 minutes, or \$20.40 per hour;*
- *A Medicaid rate for service code 96152 of \$19.92 per 15 minutes, or \$79.68 per hour.*

*Step 1.  $\$20.40 \times 365 \text{ days} = \$7,446.00$*

*Step 2.  $\$79.68 \times 52 \text{ weeks} = \$4,143.36$*

*Step 3.  $\$7,446.00 + \$4,143.36 = \$11,589.36$*

*Step 4.  $\$11,589.36 \div 365 \text{ days} = \$31.75$  estimated daily rate for remedial services*

Amend subrule 156.9(2), introductory paragraph, as follows:

**156.9(2)** Out-of-state group care payment rate. The payment rate for maintenance and ~~treatment~~ *child welfare* services provided by public or private agency group care licensed or approved in another state shall be established using the *same* rate-setting methodology as that in rules 441—185.83(234) and 441—185.101(234) to 441—185.108(234) subrule 156.9(1), unless the director determines that appropriate care is not available within the state pursuant to the following criteria and procedures.

ITEM 6. Amend subrule 156.10(1), introductory paragraph, as follows:

**156.10(1)** Group care facilities. The department shall provide payment for group care maintenance and *child welfare services* according to the following policies.

ITEM 7. Amend rule 441—156.19(237) as follows:

**441—156.19(237) Rate of payment for care in a residential care facility.** When a child is receiving group care maintenance and ~~treatment~~ *child welfare* services in a licensed residential care facility and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the group care maintenance and ~~treatment~~ *child welfare* services in accordance with rules 441—185.81(234) and 441—185.101(234) to 441—185.108(234) subrule 156.9(1). When a child receives group care maintenance and ~~treatment~~ *child welfare* services in a licensed residential care facility and is eligible for supplemental security income or state supplementary assistance, the department will pay for group care ~~treatment~~ *child welfare* services in accordance with rules 441—185.81(234) to 441—185.108(234) subrule 156.9(1).

This rule is intended to implement Iowa Code section 237.1(3)“e.”

ITEM 8. Amend rule 441—156.20(234) as follows:

Amend subrule **156.20(1)**, paragraph “a,” subparagraph (2), as follows:

(2) Limitations. Department payment for group care shall be limited to placements which have been authorized by the ~~review organization pursuant to rule 441—185.4(234) department~~ and which conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2) and

~~where the facility meets provider certification according to rule 441—185.10(234).~~

Amend subrule 156.20(2) as follows:

**156.20(2)** Provider eligibility for payment. Except for payments for foster parents or youth in supervised apartment living, payment shall be limited to providers with a purchase of service contract in force. Providers of family foster care treatment services and *supervision and providers of group care treatment* services shall meet certification requirements in rule 441—185.9(234) or 441—185.10(234) and *shall* have a purchase of rehabilitative treatment and supportive services contract under 441—Chapter 152 in force.

ITEM 9. Amend rule 441—182.2(234) as follows:

Amend subrule **182.2(1)**, paragraph “a,” by adopting new subparagraphs (6) and (7) as follows:

(6) Monitoring of a child's or parent's behavior during sibling or parent-child visits; and

(7) Monitoring of a child's behavior during transportation to and from juvenile court hearings, to and from sibling visits, or to and from parent-child visits, if specifically requested by the child's worker on Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, and approved by the service area manager or designee.

Amend subrule **182.2(5)** by adopting new paragraph “c” as follows:

c. Unless a similar rehabilitative service has been authorized under rule 441—185.3(234), services may include:

(1) Performing a psychosocial evaluation of the family's strengths and needs as they relate to the child's safety, permanency and well-being; and

(2) Identifying resources available to promote and support the family's ability to maintain the child's safety, permanency and well-being.

ITEM 10. Amend rule 441—182.4(234) by adopting the following new subrule:

**182.4(7)** Time limits for rehabilitative and nonrehabilitative treatment services. Authorization of rehabilitative and nonrehabilitative treatment services shall be limited as follows:

a. The Iowa Foundation for Medical Care is responsible for issuing authorizations for rehabilitative treatment services for children who are eligible for Medicaid in response to requests received on or before December 31, 2006.

(1) The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

(2) Rehabilitative treatment services shall not be authorized for any child who is approved by the Iowa Medicaid enterprise for remedial services under rule 441—78.12(249A).

b. The service area manager or designee is responsible for issuing authorizations for rehabilitative treatment services for children who are not eligible for Medicaid in response to requests received on or before December 31, 2006. The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

c. The service area manager or designee is responsible for issuing authorizations for nonrehabilitative treatment services in response to requests received on or before December 31, 2006. The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 11. Amend rule 441—185.2(234) by adopting the following **new** subrule:

**185.2(6)** Time limit on authorization. The Iowa Foundation for Medical Care is responsible for issuing authorizations for rehabilitative treatment services for children who are eligible for Medicaid in response to requests received on or before December 31, 2006.

ITEM 12. Rescind and reserve **441—Chapter 185, Division IV**.

ITEM 13. Amend subrule 202.2(2) as follows:

**202.2(2)** The need for foster care placement and social and other related services including, but not limited to, medical, psychiatric, psychological, and educational services shall be determined by an assessment of the child and family to determine their needs and appropriateness of services. As-

sessments include the educational, physical, psychological, social, family living, and recreational needs of the child and the family's ability to meet those needs. The assessment is a continual process to identify needed changes in service or placement for the child. ~~The need for treatment services shall be determined by the review organization pursuant to rule 441—185.2(234).~~

ITEM 14. Amend paragraph **202.4(5)“f”** as follows:

f. The treatment needs of the child as ~~determined by the review organization pursuant to rule 441—185.2(234).~~

[Filed Emergency 10/12/06, effective 11/1/06]

[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

**ARC 5520B****EDUCATIONAL EXAMINERS  
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments provide a more accurate description of the authority of a licensee to teach two grades above or two grades below the current range of grade levels in the licensee's endorsement area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5343B**. A public hearing on the amendments was held on September 20, 2006. No one attended the public hearing, and no written comments were received. One change from the Notice has been made. The introductory paragraph of rule 282—14.140(272) was rescinded to further clarify the intent of the rule and to parallel the language contained in rule 282—14.141(272).

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective December 13, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.106, 14.140, 14.141] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5343B**, IAB 8/30/06.

[Filed 10/18/06, effective 12/13/06]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

**ARC 5519B****EDUCATIONAL EXAMINERS  
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 20, "Evaluator Endorsement and License," Iowa Administrative Code.

This amendment provides an extension of the administrative license to administrators who will need to renew their licenses before the new evaluator renewal training course is available in the fall of 2007.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5344B**. A public hearing on this amendment was held on September 20, 2006. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective December 13, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [20.57] is being omitted. This amendment is identical to that published under Notice as **ARC 5344B**, IAB 8/30/06.

[Filed 10/18/06, effective 12/13/06]  
[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

**ARC 5538B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 46, "Overpayment Recovery," Iowa Administrative Code.

These amendments affect policy for the Family Investment Program (FIP) as follows:

1. Change the method of determining the FIP monthly grant amount from retrospective budgeting (setting the next month's grant according to the past month's income) to prospective budgeting (setting the amount based on anticipated income). Changing from retrospective to prospective budgeting will align the FIP budgeting method with the method used by the Food Assistance and the Family Medical Assistance Program (FMAP)-related Medicaid programs. This change will improve administrative efficiency and eliminate confusion for participants. Eligibility and benefits will be determined based on the best estimate of income that the household expects to receive.

2. Remove references to suspension of benefits. Under retrospective budgeting, receipt of a third or fifth paycheck in a month caused participants to be ineligible for benefits for one month, and benefits were suspended for that month. With prospective budgeting, suspension policies will no longer apply. Eligibility and benefits will be based on the income that can be projected for the month.

3. Eliminate monthly reporting requirements and implement a quarterly reporting requirement. Changing from monthly to quarterly reporting will improve accuracy, reduce customer confusion, provide more financial stability for participants and improve administrative efficiency by eliminating unnecessary paperwork. Information provided with the quarterly report will be used to project income and determine eligibility and benefits for the next three months.

4. Revise the list of changes that participants are required to report. Revising the list of changes participants are required to report will make it easier for participants to understand what information must be reported and will allow the department to focus on obtaining the information that is necessary to correctly determine eligibility and benefits.

5. Specify that recoupment will not apply when a change in income is timely reported and timely acted upon by the local office, but the Department's timely notice requirements

## HUMAN SERVICES DEPARTMENT[441](cont'd)

delay the action until the second calendar month following the month of change and eligibility for FIP continues. This change will prevent imposition of small overpayments incurred through no fault of the participant or the worker and will align policies between the Food Assistance, FMAP-related Medicaid, and FIP programs. The Department will continue to recoup any excess benefits issued when a participant fails to timely report a change in circumstances or when a change makes a case or a person ineligible for FIP, but the Department's timely notice requirements delay the action.

6. Change the period of ineligibility caused by receipt of a nonrecurring lump sum to align with FMAP-related Medicaid policy. Aligning the policies will encourage timely reporting of receipt of a nonrecurring lump sum, reduce confusion for participants, and improve administrative efficiency. The period of ineligibility will begin with the month when the nonrecurring lump sum is received. If the lump sum is timely reported, but timely notice provisions prevent applying it to one or both of the first two months of the period of ineligibility, no recoupment will be made for those months. If the lump sum is not timely reported, recoupment will be made.

7. Implement a combined Public Assistance Eligibility Report/Food Assistance Interim Report to be issued in months when both are required. A combined Public Assistance Eligibility Report/Food Assistance Interim Report will eliminate unnecessary paperwork, thus reducing costs, avoiding confusion for participants, and improving administrative efficiency.

8. Allow substitution of a telephone interview for a face-to-face interview at the time of reapplication or review, as appropriate. Allowing income maintenance workers the flexibility to do some FIP interviews by telephone will promote efficiency for workers while removing a barrier for families who have difficulty attending a face-to-face interview. A family may have difficulty attending a face-to-face interview because of work or school schedules, lack of transportation, lack of child care, health problems, or other issues.

9. Clarify that when a participant fails to comply with PROMISE JOBS activities offered to overcome a known barrier to self-sufficiency, that barrier will not be considered to meet the hardship criteria for receipt of FIP beyond 60 months. When a participant is offered PROMISE JOBS activities to overcome a known barrier to self-sufficiency and fails to comply, the participant will not meet hardship criteria to receive FIP beyond 60 months based on that specific barrier. This rule is amended to clarify current policy.

10. Remove references to intentional program violation. Intentional program violation rules are being rescinded to align with current policy.

11. Clarify the rule regarding the requirement to attest to citizenship or alien status to state more clearly the existing requirements. This is not a change in the requirements.

12. Clarify existing policy for projecting income prospectively when a third or fifth paycheck is received in a month.

13. Update definitions and remove outdated definitions. The change to prospective budgeting and quarterly reporting will change the meaning of some terms and make some terms unnecessary.

14. Correct a form number and an Iowa Rule of Civil Procedure citation.

These amendments do not provide for waivers in specific situations because these changes confer a benefit to recipients. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5332B**. The Department received no comments on the Notice of Intended Action. The Department has made one change to the Notice of Intended Action: Language was added to the introductory paragraph of subrule 40.24(2) to clarify that the option for a telephone interview does not apply to a person's initial application for FIP assistance. The introductory paragraph now reads as follows:

**"40.24(2)** In processing an application, the local office or the designated worker as described in rule 441—40.23(239B) who is in a disproportionate share hospital, federally qualified health center, or other facility in which out-stationing activities are provided shall conduct at least one face-to-face interview with the applicant before approval of the initial application for assistance and a face-to-face or telephone interview before approval of any subsequent application for assistance."

The Council on Human Services adopted these amendments on October 11, 2006.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code sections 239B.2, 239B.2B, 239B.3, 239B.5, 239B.6, and 239B.18.

These amendments shall become effective on January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 7, 40, 41, 46] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5332B**, IAB 8/30/06.

[Filed 10/20/06, effective 1/1/07]

[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

**ARC 5537B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment adjusts the premiums assessed for the Medicaid for Employed People With Disabilities (MEPD) coverage group. Iowa Code section 249A.3, subsection 2, paragraph "a," specifies that the maximum premium payable by a person in this group whose income exceeds 150 percent of the federal poverty level shall be based on the average cost to the state for state employees' health insurance. The Iowa State Plan for Medical Assistance, approved by the federal Centers for Medicare and Medicaid Services as a condition of federal funding, provides that the maximum premium shall be equal to 7.5 percent of the person's gross income.

The cost of state employees' health insurance changed effective January 2006; therefore, a corresponding change is being made in the premiums for MEPD. All premium amounts increase by 4.97 percent. This change raises the



## HUMAN SERVICES DEPARTMENT[441](cont'd)

current maximum premium amount from \$422 per month to \$443 per month and maintains a sliding premium scale.

Because the federal poverty level has increased at a lower rate than the cost of state employee health insurance, the top of the new premium scale ends at a higher percentage of the federal poverty level. This change is necessary to keep the maximum premium at 7.5 percent of income. The Department has chosen to expand the five highest federal poverty level increments in the premium scale to absorb this change rather than reassign new federal poverty levels throughout the premium scale. Increasing the federal poverty level increments only at the high end of the premium scale could give an advantage to the persons who have a higher income; but in actuality, MEPD members are not in that income range. Most MEPD participants pay premiums at the lower end of the premium scale.

This amendment does not provide for waivers in specific situations because all members should be subject to the same premium collection activity based on similar income tests. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5283B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on October 11, 2006.

This amendment is intended to implement Iowa Code section 249A.3, subsection 2, paragraph "a."

This amendment shall become effective on January 1, 2007.

The following amendment is adopted.

Amend subparagraph **75.1(39)“b”(1)** as follows:

(1) Premiums shall be assessed as follows:

IF THE INCOME OF THE ELIGIBLE INDIVIDUAL IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$27 \$28
178% of Federal Poverty Level	\$50 \$52
206% of Federal Poverty Level	\$74 \$78
234% of Federal Poverty Level	\$96 \$101
262% of Federal Poverty Level	\$120 \$126
290% of Federal Poverty Level	\$144 \$151
318% of Federal Poverty Level	\$167 \$175
346% of Federal Poverty Level	\$192 \$202
374% of Federal Poverty Level	\$214 \$225
402% of Federal Poverty Level	\$238 \$250
430% of Federal Poverty Level	\$262 \$275
485% 489% of Federal Poverty Level	\$292 \$307
540% 548% of Federal Poverty Level	\$325 \$341
595% 607% of Federal Poverty Level	\$356 \$374
650% 666% of Federal Poverty Level	\$387 \$406
705% 725% of Federal Poverty Level	\$422 \$443

[Filed 10/20/06, effective 1/1/07]

[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

**ARC 5536B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments add Medicaid coverage of certain prescription and nonprescription smoking cessation drugs. This coverage change is mandated by 2005 Iowa Acts, chapter 175, section 9, subsection 12. The estimated cost is approximately \$1.46 to \$2.24 million per fiscal year.

The Department considered recommendations by the Drug Utilization Review Commission and the Pharmaceutical and Therapeutics Committee in making the coverage decision. After careful consideration of all the facts, the Department decided to limit the nicotine replacement product coverage to:

- Generic bupropion sustained-release products that are FDA-indicated for smoking cessation; and
- Over-the-counter nicotine replacement patches and gum, with prior authorization.

This decision was based on:

- A comprehensive review of best practices and scientific clinical literature; and
- A rational and cost-effective approach to the addition of a new category of drug coverage.

Nicotine patches and gum will be covered with a prior authorization for members who are 18 years of age or older and have a diagnosis of nicotine dependence and confirmation of enrollment in the Quitline Iowa program for counseling. The maximum allowed duration of therapy will be 12 weeks per 12-month period.

Generic bupropion sustained-release products that are FDA-indicated for smoking cessation, which are not available over the counter, will be available without prior authorization.

These amendments do not provide for waivers in specific situations because they confer a benefit by adding Medicaid coverage of smoking cessation drugs. The Department has an exception to policy procedure that could be pursued if a recipient would feel unduly penalized by this change.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5284B**. The Department received three comments on the Notice of Intended Action, all requesting coverage of more products and therapies.

The Department believes that the strategy for implementation of Medicaid coverage addresses both of the areas recommended in the Public Health Service-sponsored clinical practice guideline, Treating Tobacco Use and Dependence. Pharmacotherapy is provided through two dosage forms of nicotine replacement therapy (patch and gum) in addition to generic Zyban®, and other drugs that may be used for smoking cessation that are currently covered. Additionally, Medicaid members will have access to the Quitline Iowa counseling program.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 11, 2006.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 175, section 9, subsection 12.

These amendments shall become effective on January 1, 2007.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.1(2)“a”(2)**, numbered paragraph **“4,”** as follows:

4. Drugs used to promote smoking cessation (*except generic bupropion sustained-release products that are FDA-indicated for smoking cessation*);

ITEM 2. Amend subparagraph **78.1(2)“f”(1)** by adding the following two **new** nonprescription drugs in alphabetical order:

Nicotine gum 2 mg, 4 mg

Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day

[Filed 10/20/06, effective 1/1/07]

[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

## ARC 5533B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, “Child Care Services,” Iowa Administrative Code.

These amendments make the following changes to policy for the Child Care Assistance program:

- Remove language that allows an exception to the age requirement for children with “special circumstances” who are part of a Family Investment Program (FIP) household. This exception is in conflict with state law. Iowa Code section 237A.1 defines “child” to be a person 12 years of age or younger unless the person has a developmental disability.

- Clarify the review and redetermination process by adding a six-month certification period. The current rules state that eligibility must be redetermined every six months, but the rules are not clear on the consequences if a family does not complete the review requirements.

- Add a new form to be used for reporting the information needed to redetermine eligibility. Current rules require the family to resubmit the entire initial application. The Department will mail the review form to the family before the end of the six-month certification period and notify the family of the date the certification period ends. If the family does not return the review form before the certification period ends, assistance will be canceled, and the family will have to reapply for benefits using the normal application process.

- Update the provider reimbursement ceilings for basic care to reflect the 2004 market rate survey of child care providers. The Department has been increasingly concerned that providers have begun to limit the number of Child Care Assistance children they enroll because the program's rates are still based upon the 2002 market rate survey.

Increasing the rate ceilings to reflect the 2004 survey is expected to raise the average monthly payment by \$23 per month. The specific increase depends on the type of facility and the age of the child. The Eighty-first General Assembly

appropriated funding for this purpose in 2006 Iowa Acts, House File 2734. Only registered child development homes and licensed child care centers are affected. The rate ceiling for unregulated child care homes remains the same to serve as an incentive for registration.

These amendments do not provide for waivers in specific situations because all Child Care Assistance recipients should be subject to the eligibility requirements. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5369B**. The Department received one comment on the Notice of Intended Action, questioning why there was no increase in the maximum rate for school-aged children. The 2004 market rate survey indicated that the 75th percentile rate for this segment of the population remained the same as the results of the 2002 survey. Another survey will be conducted in 2006.

The Council on Human Services adopted these amendments on October 11, 2006. These amendments are identical to the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 237A.13 and 237A.29.

These amendments shall become effective on January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [170.2(2)“a,” 170.3(1)“d,” 170.3(5), 170.4(7)“a”] is being omitted. These amendments are identical to those published under Notice as **ARC 5369B**, IAB 8/30/06.

[Filed 10/20/06, effective 1/1/07]

[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

## ARC 5535B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.36, the Department of Human Services amends Chapter 184, “Individual and Family Direct Support,” Iowa Administrative Code.

These amendments conform rules for the Family Support Subsidy Program and the Comprehensive Family Support Program to statutory changes enacted in 2006 Iowa Acts, Senate File 2217, division VI. The amendments add statutory provisions for the use of family support subsidy funds, for exclusions to family support subsidy eligibility, for a requirement for the family to identify the age at which the family member's eligibility will end, and for changes in determining the amount of the subsidy. Limiting eligibility for the Family Support Subsidy Program will make funds available to expand the Comprehensive Family Support Program.

The amendments also rescind Division II of Chapter 184, Personal Assistance Services Program, and replace it with a new Division II, Comprehensive Family Support Program. The Comprehensive Family Support Program, also known as

HUMAN SERVICES DEPARTMENT[441](cont'd)

"Children at Home," provides families with assistance in locating resources and with funding when other sources of support are not available. The rules cover application procedures, eligibility, and program administration. Whenever possible, the Department intends to contract with local agencies for program administration.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5367B**. The Department held a public hearing to receive comments on these amendments. One person attended. Another person submitted written comments. The Department has made the following changes to the Notice of Intended Action:

- Paragraph 184.2(7)"c" now states that a family is ineligible for family support services when Medicaid home- and community-based waiver services under the consumer choices option are "available to the family member" instead of "provided for the family member." Rules for the consumer choices option were published in the Iowa Administrative Bulletin on August 30, 2006, as **ARC 5334B**. The consumer choices option will be implemented in one service area at a time over the next several months.

- In subrule 184.3(4), the reference to the Department local office is removed. Staff in the Department's Division of Child and Family Services currently administer this program.

- In rule 441—184.27(225C), the minimum size for a parent advisory council is lowered from seven members to five members, in response to a concern that a larger council might be difficult to recruit in a rural area.

The Council on Human Services adopted these amendments on October 11, 2006.

These amendments are intended to implement Iowa Code sections 225C.35 to 225C.42 and 225C.46 to 225C.49 as amended by 2006 Iowa Acts, Senate File 2217, division VI.

These amendments shall become effective on January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 184] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5367B**, IAB 8/30/06.

[Filed 10/20/06, effective 1/1/07]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

## ARC 5510B

### MEDICAL EXAMINERS BOARD[653]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

Notice of Intended Action to solicit public comment on these amendments was published in the August 2, 2006, Iowa Administrative Bulletin as **ARC 5265B**. A public hearing was held and no comments were received, either at the public hearing or in writing. These amendments are identical to those published under Notice of Intended Action.

The amendments address which physicians need an Iowa medical license to practice in Iowa and which ones do not. The definition of "incidentally called into this state in consultation with a physician and surgeon licensed in this state" is clarified.

Rules concerning the current two types of temporary licenses (i.e., those for urgent need and those for educational purposes) are eliminated and supplanted with rules that allow temporary licenses for more reasons, i.e., for Board-approved activities set forth in the amendments. The Board will have more discretion in granting temporary licenses. An expert physician who comes to Iowa to demonstrate to or proctor physicians who are learning procedures will be required to have a temporary Iowa license if any hands-on patient care is or could be involved or if the expert physician guides an Iowa physician in how to perform patient care when a patient is involved. The fee for a temporary license is reduced to encourage physicians who should have a temporary Iowa license to obtain one.

Board-approved activities, eligibility for a temporary license, the application review process and the temporary license application cycle are described for M.D.s and D.O.s who do or do not have a medical license in another United States jurisdiction. The process is simplified for those who have a license in good standing in another United States jurisdiction. A license will no longer be required for a visiting resident physician enrolled in an out-of-state resident training program if the visiting resident physician holds a resident or permanent medical license in good standing in the home state of the resident training program, provides medical care in Iowa as a part of the resident training program, and is under the supervision of an Iowa-licensed physician. If the visiting resident physician does not hold a medical license in good standing in the home state of the resident training program, a resident or permanent physician license in Iowa is required for the visiting resident to provide medical care in Iowa. A physician participating in further medical education in Iowa will not be required to have an Iowa license to provide patient care as long as the physician is under the supervision of the Iowa-licensed physician. A camp physician who serves without remuneration other than for expenses is exempt from paying temporary licensure fees.

The board adopted the amendments to Chapters 8, 9 and 10 during its regularly scheduled meeting on October 12, 2006.

These amendments are intended to implement Iowa Code chapters 147, 148, 150, 150A, and 272C.

MEDICAL EXAMINERS BOARD[653](cont'd)

These amendments will become effective on January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [8.4(4), 9.1, 9.2(2), 10.1, 10.3(1), 10.5] is being omitted. These amendments are identical to those published under Notice as **ARC 5265B**, IAB 8/2/06.

[Filed 10/12/06, effective 1/1/07]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

## **ARC 5529B**

### **PROFESSIONAL LICENSURE DIVISION[645]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

The amendment provides that someone who has applied for an Iowa license and who is licensed and has been practicing in another state for the past two years prior to applying for licensure in Iowa may be issued an Iowa license, if the person has a minimum of a bachelor's degree and no discipline-related issues.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5281B**. A public hearing was held on August 22, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

The Board adopted this amendment on October 19, 2006. This amendment will become effective December 13, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 155 and 272C.

The following amendment is adopted.

Amend rule **645—141.7(155)**, numbered paragraphs "3" and "4," as follows:

3. ~~Provides official copies of the academic transcripts sent directly from the school to the board office~~ *Provides evidence of a minimum of a bachelor's degree from a college or university accredited by the United States Department of Education. An official copy of the academic transcript denoting date of graduation and the degree conferred shall be sent directly from the school to the board office;*

4. ~~Shows evidence of licensure requirements similar to those required in Iowa~~ *Provides evidence of an active license as a nursing home administrator for at least two years just prior to application, or meets the qualifications outlined in rule 141.4(155).*

[Filed 10/19/06, effective 12/13/06]  
[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

## **ARC 5521B**

### **PROFESSIONAL LICENSURE DIVISION[645]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 327, "Practice of Physician Assistants," Iowa Administrative Code.

The adopted amendment is consistent with 2006 legislative changes which permit the prescribing of stimulants by a physician assistant.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 16, 2006, as **ARC 5295B**. A public hearing was held on September 6, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

The amendment was adopted by the Board of Physician Assistant Examiners on October 18, 2006.

This amendment will become effective December 13, 2006.

This amendment is intended to implement 2006 Iowa Acts, House File 2331.

The following amendment is adopted.

Amend subrule **327.1(1)**, paragraph "s," subparagraph (2), as follows:

(2) The physician assistant may not prescribe Schedule II controlled substances which are listed as ~~stimulants or~~ depressants in Iowa Code chapter 124. The physician assistant may order Schedule II controlled substances which are listed as ~~stimulants or~~ depressants in Iowa Code chapter 124 only with the prior approval and direction of a physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen by the physician assistant.

[Filed 10/18/06, effective 12/13/06]  
[Published 11/8/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/06.

## **ARC 5531B**

### **PUBLIC SAFETY DEPARTMENT[661]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 692.10, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," and adopts a new Chapter 81, "Criminal Intelligence Information," Iowa Administrative Code.

The rules currently included in Iowa Administrative Code 661—Chapter 8, Division II, govern the collection, handling, and dissemination of criminal intelligence information. Criminal intelligence information is among the most sensitive information handled by criminal justice agencies, and the rules seek to strike a careful balance between confidentiality and privacy concerns and the need for timely and efficient sharing of information among criminal justice and other agencies to further crime prevention and homeland security.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

The current rules are in need of updating and these amendments accomplish this task. In addition, the rules on criminal intelligence information are being moved to new Chapter 81 as part of an ongoing effort to reorganize and renumber the Department's administrative rules into a more understandable framework.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 13, 2006, as **ARC 5378B**. A public hearing on these proposed amendments was held on October 12, 2006. No comments were received at the hearing or otherwise. The amendments adopted here are identical to those proposed in the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 692.

These amendments will become effective on January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 8.201 to 8.207; adopt Ch 81] is being omitted. These amendments are identical to those published under Notice as **ARC 5378B**, IAB 9/13/06.

[Filed 10/19/06, effective 1/1/07]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

**ARC 5530B****PUBLIC SAFETY  
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Department of Public Safety hereby rescinds Chapter 9, "Complaint Against an Employee," and adopts a new Chapter 35, "Complaints Against Employees," Iowa Administrative Code.

Procedures for accepting and processing complaints against employees of the Department of Public Safety have been in place with little change for over 28 years; these rules have become outdated in two regards. First, the traditional name for the unit charged with conducting investigations of allegations of misconduct by employees of the Department, the Internal Affairs Bureau, has been replaced with the more descriptive Professional Standards Bureau. Second, complaints against employees may now be filed electronically through the Web site of the Department. Both of these changes are incorporated in new Chapter 35. All administrative rules of the Department are being renumbered to enhance their accessibility to members of the public and to those affected by the rules; the rules reflect assignment of the rules on complaints against employees to new Chapter 35.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 13, 2006, as **ARC 5377B**. A public hearing on the proposed amendments was held on October 5, 2006. No comments were received either at the public hearing or otherwise. The amendments adopted here are identical to those proposed in the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 80.

These amendments will become effective January 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Ch 9; adopt Ch 35] is being omitted. These amendments are identical to those published under Notice as **ARC 5377B**, IAB 9/13/06.

[Filed 10/19/06, effective 1/1/07]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

**ARC 5528B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.17(19), the Department of Revenue hereby amends Chapter 86, "Inheritance Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. 29, p. 302, on August 30, 2006, as **ARC 5359B**.

Item 1 amends Chapter 86 to change all references to "Iowa Department of Revenue and Finance" to "Iowa Department of Revenue."

Item 2 amends subrule 86.2(1) by adding new paragraphs "c" and "d" to implement 2004 Iowa Acts, chapter 1073. The new paragraphs provide that estates that do not have an Iowa inheritance or estate tax due are not required to file an Iowa inheritance tax return if specific criteria are met. In addition, these paragraphs set forth the procedures relating to the transfer of real property of an estate by the filing of an affidavit on behalf of an estate when no Iowa inheritance tax return is due or a tax clearance is issued.

Item 3 amends rule 701—86.9(450) to implement 2004 Iowa Acts, chapter 1073, which provides that, effective for estates with decedents dying on or after July 1, 2004, the time period in which the Department has to obtain an appraisal of real property is now 60 days instead of 30 days from the date the return is filed with the Department.

Item 4 amends subrule 86.14(7) by adding new unnumbered paragraphs to implement 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 38, regarding procedures for filing a disclaimer of interest in an estate for estates with decedents dying on or after July 1, 2004.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 13, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 450.22, 450.37, 450.53, 450.58, 450.84, and 633.901 to 633.917.

REVENUE DEPARTMENT[701](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 86] is being omitted. These amendments are identical to those published under Notice as **ARC 5359B**, IAB 8/30/06.

[Filed 10/19/06, effective 12/13/06]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

## ARC 5508B

### TRANSPORTATION DEPARTMENT[761]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.9, 307.10 and 307.12, the Department of Transportation, on October 10, 2006, adopted amendments to Chapter 10, "Administrative Rules and Declaratory Orders," Chapter 11, "Waiver of Rules," Chapter 28, "Iowa Transportation Map," and Chapter 122, "Keep Iowa Beautiful Program," and adopted new Chapter 12, "Declaratory Orders," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 30, 2006, Iowa Administrative Bulletin as **ARC 5327B**.

The Department reviewed its process concerning declaratory orders. As a result of that review, the Department decided that declaratory orders should be a separate chapter. New Chapter 12 defines "declaratory order" and "petition for declaratory order" and clarifies the process for seeking a declaratory order. Chapters 10, 11, 28 and 122 make corrective amendments concerning the Director's Staff Division, which is no longer in existence.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 17A, 307 and 314.

These amendments will become effective December 13, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 10, 11, 28, 122; adopt Ch 12] is being omitted. These amendments are identical to those published under Notice as **ARC 5327B**, IAB 8/30/06.

[Filed 10/11/06, effective 12/13/06]  
[Published 11/8/06]

[For replacement pages for IAC, see IAC Supplement 11/8/06.]

## ARC 5506B

### TRANSPORTATION DEPARTMENT[761]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 10, 2006, adopted amendments to Chapter 602, "Classes of Driver's Licenses," Chapter 604, "License Examination," Chapter 605, "License Issuance," Chapter 607, "Commercial Driver Licensing," Chapter 615, "Sanctions," Chapter 620, "OWI and Implied Consent," Chapter 630, "Nonoperator's Identification," Chapter 634, "Driver Education," and Chapter 635, "Motorcycle Rider Education (MRE)," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 30, 2006, Iowa Administrative Bulletin as **ARC 5330B**.

A military extension is no longer limited to noncommercial Class C and Class M licenses, in accordance with 2005 Iowa Acts, chapter 8, section 19. Rules 761—602.12(321), 761—604.21(321) and 761—604.31(321) are amended to reflect this change.

Rules 761—602.11(321), 761—602.12(321), 761—602.13(321), and 761—630.2(321) are amended to correct language that is out of date regarding the period of validity of noncommercial Class C licenses, Class D licenses, Class M licenses, and nonoperator's identification cards.

Rules 761—602.18(321) and 761—602.19(321) are amended to change the period of validity of a motorcycle instruction permit and a noncommercial instruction permit from two years to four years, in accordance with 2006 Iowa Acts, House File 2525, sections 20 and 22.

Rule 761—602.25(321) and subrule 615.23(2) are amended to implement the provisions of 2005 Iowa Acts, chapter 8, sections 1, 15, 26 and 27, regarding license issuance and license suspension for minors who do not attend school. Iowa Code Supplement section 321.213B requires the Department to adopt rules.

Rule 761—602.26(321), minor's school license, is amended to add language from 2005 Iowa Acts, chapter 8, section 18, regarding the closest school bus stop or public transportation service.

Rules in Chapter 605 are amended to make changes to endorsement and restriction codes. Also, Class M (motorcycle) is changed to motorcycle only. Class M will not be added to another license class. Instead, if the licensee has another class of license, the motorcycle privilege will be a motorcycle endorsement added to the license. These changes are being made for consistency with other states and should be transparent to licensees.

Rule 761—615.25(321) is rescinded. This rule, which relates to the driver's license indebtedness clearance pilot project, is obsolete. 2006 Iowa Acts, Senate File 2253, sections 35, 36 and 86, eliminated this pilot project.

Subrule 615.42(1), which pertains to the remedial driver improvement action under Iowa Code section 321.180B, is amended to reflect the provisions of 2006 Iowa Acts, House File 2525, section 24. With the change, a person under the age of 18 who holds a full license is subject to remedial action if the violation or accident occurred while the person held an instruction permit or intermediate license.

Rule 761—615.43(321) is amended to provide that the Department may require a person whose license is subject to

TRANSPORTATION DEPARTMENT[761](cont'd)

suspension under Iowa Code section 321.210C to complete a driver improvement program in lieu of suspension.

Subrule 634.6(1) and subrule 634.7(1), paragraph “b,” which pertain to the qualifications for a driver’s education teacher and a behind-the-wheel instructor, are amended to remove the restriction that the driver’s license held by the individual must be an Iowa license. The Department has waived the Iowa driver’s license requirement for driver’s education teachers and behind-the-wheel instructors several times. A permanent rule change is warranted.

Other amendments in this rule making add the word “driver’s” for consistency or clarity, correct language that is out of date, or update language to coordinate with the changes outlined above.

These amendments do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective December 13, 2006.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 602, 604, 605, 607, 615, 620, 630, 634, 635] is being omitted. These amendments are identical to those published under Notice as **ARC 5330B**, IAB 8/30/06.

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[For replacement pages for IAC, see IAC Supplement 11/8/06.]

**ARC 5507B**

## TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 10, 2006, adopted an amendment to Chapter 750, “Aircraft Registration,” Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the August 30, 2006, Iowa Administrative Bulletin as **ARC 5329B**.

This amendment corrects the name of the office, Internet address and mailing address for aircraft registration. The Office of Aviation is responsible for registering aircraft.

This amendment does not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 17A.

This amendment will become effective December 13, 2006.

Rule-making action:

Amend rule 761—750.3(17A) as follows:

**761—750.3(17A) Information and forms.** Information, instructions and forms are available from the ~~office of vehicle services~~ *office of aviation* or on the department’s Web site at <http://www.iamvd.com> ~~http://www.iawings.com~~. Application forms may also be obtained from aircraft dealers. The mailing address of ~~vehicle services~~ *for aircraft registration* is: ~~Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278~~ *Iowa Department of Transportation, Office of Aviation, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010*. ~~The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.~~

This rule is intended to implement Iowa Code section 17A.3.

[Filed 10/11/06, effective 12/13/06]  
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**IOWA ADMINISTRATIVE BULLETIN**  
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